A MISSED OPPORTUNITY: *UNITED STATES V HALL* AND THE BATTLE OVER THE FOURTEENTH AMENDMENT

by

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Abstract

During the course of Reconstruction both the Supreme Court and the lower level federal courts faced the task of interpreting Reconstruction legislation, including the Thirteenth, Fourteenth and Fifteenth Amendments and the Enforcement Acts. By the end of Reconstruction the Supreme Court had defined these groundbreaking pieces of legislation in a conservative manner that negatively impacted the former slaves. The lower-level courts, however, had embraced earlier opportunities to broaden the nationalistic meaning of these Amendments. One such opportunity was *United States v Hall*. This trial level court case initially expanded the scope of the Fourteenth Amendment to protect the rights of African Americans. The *Hall* Case was one of the great "might have beens" in U.S. Constitutional history.

This study analyzes Ku Klux Klan violence leading up to the Eutaw riot and the subsequent court case, *U.S. v Hall*. Conflict broke out during a pre-election political rally when Democrats and Republicans met simultaneously at the Greene County, AL, Court House. The riot resulted in the federal government's attempts to prosecute the rioters under the Enforcement Act of 1870. The *Hall* case was one of the first in which federal judges interpreted the Fourteenth Amendment. Federal prosecutors challenged the judges to make a broad, nationalistic interpretation, which would have enabled the federal government to protect the rights of the former slaves for the long haul. What—exactly—were the privileges and immunities of national citizenship? Did the Fourteenth Amendment apply the Bill of Rights to the states? Are these rights protected against the state governments? These are the issues Attorney General John P. Southworth and Circuit Court Judge William Woods tackled in the federal trial.

Ultimately, the government failed to secure a conviction of the rioters but set a strong precedent in Judge Woods' opinion for later federal courts to establish the Fourteenth Amendment's connection to the Bill of Rights. Unfortunately, the Supreme Court failed to follow the precedent. This analysis provides historians a better understanding of the work of the lower level federal courts' and their contribution to the constitutional issues of Reconstruction.

Table of Contents

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Dedication

To the two people who are allowed to think I am special, no matter what-

my parents, Darrell and Charlyn.

Introduction – "No State Shall"

The history of the United States is filled with defining moments. Moments that changed the direction of the country's future. The foundation of America's legal system was built on the United States Constitution. The ever-evolving development of the Constitution gave the federal courts the opportunity to create many of those defining moments, sometimes to the benefit of the United States and sometimes to its detriment. Eutaw, Alabama presented the courts with one such opportunity midway through Reconstruction, in 1870. *United States v Hall* could have been a turning point in Reconstruction. The case developed a nationalistic and broad interpretation of the Fourteenth Amendment and the Enforcement Act, a precedent which the Supreme Court could have followed. This broad interpretation would have protected the rights granted to blacks in the Bill of Rights. Unfortunately however, *U.S. v Hall* became a prime example of what *could* have happened during Reconstruction.

U.S. v Hall provided the courts the first opportunity to legitimize the efforts of the Republican Congress. To provide true equal rights to the newly freed slaves, the Fourteenth Amendment had to be linked to the Bill of Rights to provide the freedmen with the same rights guaranteed by the United States Constitution. *U.S. v Hall* gave the federal courts the opportunity to define the rights of citizenship and begin to turn around the racial subjugation the country was founded on. Before *Hall* no other Fourteenth Amendment case had been brought to the federal courts. *Hall* created a brief opportunity where anything was possible. The interpretation of the Fourteenth Amendment had yet to be formed. The courts could generate an interpretation that would expand Democracy to all citizens of the nation, or destroy the chance for black citizens to obtain equal rights under the law. Federal Circuit Judge William B. Woods rose to the occasion with a resounding affirmation of federal rights under the newly minted Fourteenth Amendment.

Woods' opinion of the defense team's preliminary motion ruled that the Fourteenth Amendment made the provisions of the Bill of Rights enforceable against both states and individuals. The federal court according to Woods, was well within its authority to prosecute the perpetrators—evidently members of the Ku Klux Klan—for denying Republicans their First Amendment rights to free speech and assembly. Woods' opinion provided a broad national foundation on which the federal courts could continue to build constitutional doctrine and a rule of law strong enough to provide an enduring democratic society. Unfortunately, however, the Supreme Court did not take up the precedent that Woods had provided. Instead the nation's High Court decided on a narrow interpretation of federal rights in the *Slaughterhouse Cases*—one which left the constitutional authority of the national government little changed from its Pre-Civil War understanding. Instead of the legal foundation for a strong central government, *US v. Hall* became one of the great "Might Have Beens" in American history.

Section one of the Fourteenth Amendment to the U.S. Constitution reads, "All persons born or naturalized in the United States and subject to the jurisdiction therof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[1] Since its ratification on July 9, 1868, this section has been one of the most debated sections in all of the United States Constitution. The battle over three words in particular, "privileges and immunities," began almost immediately. This controversy developed into a great legal battle during Reconstruction.

[1] U.S. Constitution, 14th Amendment, sec. 1.

The fate of Reconstruction hinged on defining this term. What exactly were the privileges and immunities of U.S. citizenship? The Fourteenth Amendment created a platform through which the federal government could enforce the rights and regulations identified by the Bill of Rights. After Congress created the new Amendment they found it needed legislative support. Section Five of the Fourteenth Amendment gives Congress the express power to enforce the Amendment with appropriate legislation.[2] Thus, in hopes of controlling the rampant Ku Klux Klan violence in the South, Congress developed the first Enforcement Act of 1870, which was implemented on May 31, 1870. This new law required that any citizen who qualified to vote under the Constitution could not be prevented from voting due to "color, race, or previous condition of servitude."[3] The Act went on to negate any previous law in direct conflict with the new Act by stating, "any constitution, law, custom, usage or regulation of any State or Territory, or by or under its authority to the contrary notwithstanding."[4] The Act targeted both individual and state action. The framers recognized that not only did individuals prevent the freedmen from exercising their right to vote, but the southern states did nothing to prevent these individuals from interfering. Thus the Enforcement Act outlawed action on the part of individuals. Section six of the Act outlawed riding or conspiring on public roads with the aim to prevent any person from exercising their rights granted by the Constitution. This statute also included punishment for preventing citizens from exercising any rights granted by the Constitution. Section seven of the Enforcement Act linked ordinary state crimes with federal civil rights violations. While a

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[2] U.S. Constitution, 14th Amendment, sec. 5.

[3] Enforcement Act of May 30, 1870. Quoted in Wang Xi, *The Trial of Democracy: Black Suffrage and Northern Republicans, 1860-1910*, Appendix One (Athens, GA: University of Georgia Press, 1997), 267; Lou Falkner Williams, *The Great South Carolina Ku Klux Klan Trials, 1871-1872* (Athens, The University of Georgia Press, 1996), 41.

[4] Enforcement Act of May 30, 1870. Quoted in Wang Xi, *The Trial of Democracy*), 267.

person could not be tried in federal court for a state crime, such as a murder or assault, he could be tried for a federal civil rights violation committed along with the state offense.[5] For example, if assault or murder was committed to keep some persons from voting, the federal crime was the civil rights violation not the assault. By linking these two crimes, the federal government could use the punishment for the state crime as the punishment for the civil rights violation. Therefore, if a state allowed execution for a crime, a Klansman could be put to death for a federal civil rights violation.[6] This Act gave the federal government more power under Constitutional doctrine to bring Klansmen to justice. Yet to be useful and valid the Enforcement Act had to be authorized through the Fourteenth Amendment of the United States Constitution. It needed to be considered constitutionally valid, because for the Act to be effective the courts had to recognize that the Fourteenth Amendment applied the Bill of Rights to the states.

The North and the South had just finished fighting an emotionally searing and brutal war, one that had percolated under the surface of the United States for a half a century before the shooting began. Yet, the physical wounds of war healed more rapidly than the emotional and cerebral injuries caused by a desolated society. The Civil War crushed the white South. The men who survived came back to war ravaged lands. The war starved and exhausted the women. Children faced the dawn of a new nation, a new democratic society with which they were unfamiliar. People became confused, but most of all they feared the outcome of the war. They looked ahead to a completely unfamiliar nation. The laws they had lived by, both social and legal, written and un-written, changed drastically. Radical Republicans took power from

[5] Ibid.

[6] Williams, *Ku Klux Klan Trials*, 41.

southern whites and, in southern Democrats' eyes, gave it to the freedmen. This exchange of power sent a wave of fear and anger across the South– which southerners took out on blacks.

Because of this fear, Congress faced great opposition from many southerners. White southerners lived in a different social sphere than many of their northern counterparts. The traditions and values of the South were decidedly different. Southerners, specifically southern Democrats, viewed the forced implementation of these new Reconstruction regulations as an insult to their honor. Southerners valued their honor and tradition above all things and in their opinion, they were being forced to follow the laws of a foreign nation, laws that directly challenged their southern way of life. To white southerners the master had become the slave, and the slave the master. They believed it was a great insult to be considered an equal to any former slave, an insult they could not tolerate.[7]

Overall, southern Democrats believed the newly ratified state constitutions, Reconstruction Amendments, and Enforcement Acts were all unconstitutional and therefore must be illegitimate. Historian Lou Falkner Williams describes the underlying argument of southerners saying, "If legitimate government rested on the consent of the governed, if republican government depended upon the participation of the virtuous and intelligent members of the polity, if the purpose of government was to foster the welfare of the entire community, if government was responsible for protecting property rights, then [southerners] were living under an 'absolute despotism.'"[8] Yet, because of the Democrats' absolute intransigence, Republicans were forced to implement harsher and more strident legislation thus creating a vicious circle with both social and legal ramifications. Rather than define exactly what "privileges and immunities"

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[7] Wyatt-Brown, Bertram, *Southern Honor: Ethics and Behavior in the Old South: 25th Anniversary Edition* (Cary: Oxford University Press, 2007), 365.

[8] Williams, *Ku Klux Klan Trials*, 14.

would be in all situations, Republicans relied on the Supreme Court to define any vague terms. As legal historian William Nelson explains of Republicans, "While they could take pride in their success in elaborating and incorporating important moral principles such as equality and rationality into the Constitution, they made only slight headway in the task of applying those principles to specific cases in accordance with some consistent scheme. But that task was not primarily theirs. Rather, it would belong to the Supreme Court of the United States in the decades that followed the adoption of the amendment."[9]

Southern Democrats and northern Republicans disagreed fundamentally about the meaning of the Fourteenth Amendment. Southern Democrats argued that the Fourteenth Amendment's "no state shall" provisions applied only to state action, not individuals' actions. Moreover the Fourteenth Amendment's protection did not include the first ten amendments to the United States Constitution. Conversely Republicans believed the Enforcement Act gave Congress the ability to enforce the Fourteenth Amendment, and thus enforce the Bill of Rights against both state and individual actions. But the entire argument hinged on the three words– "privileges and immunities." What exactly were the privileges and immunities of national citizenship?

While the federal courts waited to define the legal doctrine behind the legislation, white southerners fought back. Fear and anger in the Black Belt of Alabama were as bad as– or worse than– any other area of the South. The Ku Klux Klan had infiltrated the heart of the state. Through racism and a desire for political control, the Klan had successfully used intimidation methods to subdue the Republican Party within both the Union Leagues and the Freedmen's

[9] William Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Cambridge: Harvard University Press, 1988), 147.

Bureau. This intimidation and political control assisted the Klan and the Democrats in suppressing any power that Congress rightfully granted to the Republicans and freedmen of the South. Through voter intimidation and violence the Klan successfully influenced elections and controlled key politicians. With the Eutaw Riot the federal government faced its first opportunity to define privileges and immunities in the Fourteenth Amendment. Using the Enforcement Act, the federal government attempted to prosecute individuals who violated the new Reconstruction Amendment. It was the first federal case to attempt to define both the new Fourteenth Amendment and the companion Enforcement Act. Though the Supreme Court failed to follow its precedent, *United States v. Hall* (1871) demonstrates what might have been in terms of a broad judicial interpretation of the Reconstruction legislation. This federal circuit court in Alabama presented the opportunity for the federal government to legitimize the Fourteenth Amendment and its direct link with the Bill of Rights. However, the Supreme Court refused to follow the *Hall* precedent, a development that was especially devastating when the Court's narrow decision in Slaughterhouse proved to be a major blow to equal rights in the United States. *Hall* also demonstrates the difficulty in prosecuting Klansmen with the Fourteenth Amendment and the Enforcement Act when the South's social and legal traditions unlawfully trumped those of the federal government. The small town of Eutaw in Greene County, as a whole, provides a microcosm in which to view the larger legal landscapes of Reconstruction, because the events in the small Alabama town show the direct effect of the new legislation on southern citizens.

One of the most tempestuous counties in the state, Greene County, is situated near the western border of Alabama.[10] Greene County is considered a part of the Black Belt in Alabama.

[10] Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (Baton Rouge: Louisiana State University Press, 1971), 246.

Historian Jonathan Weiner describes the Black Belt as "a tier of counties whose undulating terrain stretched across south-central Alabama. The name derived from its soil (dark, alluvial) and came to symbolize its population (slaves greatly outnumbered whites) and its culture (wealthy planters fashioned a plantation civilization, a cotton kingdom that was almost a state within a state)."[11] Within the Black Belt and within Greene County, the town of Eutaw saw tremendous amounts of violence at the hands of white Democrats directed toward both black and white Republicans. The years from 1866 through 1872 presented multiple opportunities in the town of Eutaw to judicially manifest the goals of southern Reconstruction. The state government proved to be incapable of enforcing laws and keeping order, so the responsibility fell to the federal government to enforce the new Legislation of Reconstruction, including the Fourteenth and Fifteenth Amendment as well as the Enforcement Act. Because of a lack of social cooperation, political designs, and continued racial upheaval, these opportunities ultimately proved to be disappointments on the judicial level.

These opportunities came in several forms: A release of federal prisoners, a murder of a high-profile Republican and, finally, a riot in the center of the town. Yet, even with all of these opportunities no permanent judicial action occurred, therefore citizens of the South garnered no respect for the new federal legislation. This lack of respect for federal authority was true across the entire South. The events and outcomes in Eutaw were mirrored in the events and outcomes of Reconstruction, as a whole. The state did not easily acquiesce to the laws of the federal government; hence southern tradition proved stronger than federal law. The Klan became more powerful than the courts.

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[11] Jonathan M. Wiener, *Social Origins of the New South Alabama, 1860-1885* (Baton Rouge: Louisiana State University Press, 1987), 78.

Alabama has always been included in any regional study of Reconstruction. However, very little work has been done on specific areas and towns within the region. It is important to look at the effects of Reconstruction on a smaller scale, so historians have specific evidence with which to analyze the broad scope of Reconstruction. Through analyzing the events of Reconstruction this study will demonstrate the great difficulty the federal government faced in *U.S. v. Hall* and illuminate why the federal government ultimately failed to establish true Democracy.

The first chapter of this study focuses on the failure of military and governmental control in Alabama, and across the South. The military failed at gaining control and respect of white citizens, and therefore any hope of social change diminished. The chapter also exhibits the shameless disregard for the new state government and the extra-legal laws which they represented in the form of a blatant murder by the Ku Klux Klan. The town of Eutaw proved to be a hotbed of political and racial activity. In March 1868 fifteen white Democrats were taken into custody after attacking a white Republican schoolteacher, Joseph Hill. These white Democrats, possibly either Klansmen themselves or Klan sympathizers, likely assailed Hill because the teacher came from the North to teach black school children. In the eyes of Democrats this Carpetbagger had overstepped his bounds and needed to be put in his place. However, the issue, the defendants claimed, came from an unpaid bill for firewood.

The men attacked Hill in broad daylight forcing him from a store into the street and then later that night several threatened him at his home. While Hill was not seriously injured, he did leave town and report the events to the Freedman's Bureau. The military government in place at the time saw it as a violent attack based purely on politics. Within two months of the attack, in May 1868, a military court tried and convicted Hill's assailants who were then sent to the Dry

Tortugas for imprisonment. The prison had a reputation for being a hellish place, and the public protested the conviction emphatically. A mere two weeks after the prisoners were convicted General George Meade, the head of the U.S. military district, astonishingly pardoned the prisoners.

If the goal of the military district was to keep order and to help adjust the South to this revolutionary new political way of life— why would Meade pardon these men? [12] Meade claimed that he reacted to social outrage, but under the circumstances the citizens of the South could not be trusted to make the proper decisions for Reconstruction. The men faced no further consequences for their actions and the citizens realized they had power over the military leader.

The military occupied the South, under the Military Reconstruction Act of 1867, until each state ratified a new state constitution that outlawed slavery ratified the Thirteenth and Fourteenth Amendments, and provided for Black suffrage. Alabama struggled with the terms set by the federal government. Not only did white Alabamians battle against the federal legislation, and specifically the ratification of a new state constitution, but they fought against the military occupation that they viewed as unnecessary. Alabama and Eutaw's lack of respect for the legitimacy of the Fourteenth Amendment foreshadowed events that transpired over Eutaw in the next two years.

Just over a year after the prisoners returned home violence broke out again. On March 31, 1870, a gang of masked men violently and openly murdered Alexander Boyd, the white Republican county solicitor, in the middle of the night. Boyd had garnered attention after declaring his plans to bring to justice the murderers of two black men who were killed earlier in

[12] William Warren Rogers Jr., "The Eutaw Prisoners: Federal Confrontation with Violence in Reconstruction Alabama," *The Alabama Review: A Quarterly Journal of Alabama History* 43, (April 1990): 89-121.

the year. The black men were accused of killing a white Democrat, but instead of having a fair trial they were taken from the prison and murdered. Boyd vowed to find the men who dared take state prisoners from a prison and enact punishment without due process.

Even with many witnesses to Boyd's murder and the sheriff being called to the scene immediately, no guilty parties were ever found. The grand jury allegedly could find no evidence to try any individual, and the state courts dropped the case. The citizens of the town either refused to implicate anyone out of reciprocity with the Klan or out of fear of retribution. William Miller, Boyd's uncle and a Republican state probate judge, later reported his own fears of violence against himself should he have testified.[13]

Through actions like the murder of Alexander Boyd, federal government officials realized that they had no power to physically punish the Klan or any violators of the new Reconstruction Amendments. Because the Fourteenth Amendment only provided the government with the opportunity to create legislation to enforce the rights of citizens, Congress had to enact a separate law which would give it the means of prosecuting *both* individual Klansmen *and* states which officially violated rights of the freed people. With the passage of the Enforcement Acts government officials believed they had created the legislation they needed to bring violators of the Reconstruction Amendments to justice. In addition to the First Enforcement Act, the Third Enforcement Act, of April 20, 1871, or the Ku Klux Klan Act, made it a felony to conspire to deny any citizen of their civil rights or any "privilege or immunity" and right protected by the Constitution of the United States. This Act also allowed the president to suspend Habeas Corpus and required jurors in the trials of any Enforcement Act cases to take an

[13]William Warren Rogers, "The Boyd Incident: Black Belt Violence During Reconstruction," *Civil War History* 21 (December 1975):309-329.

oath that they had never been party, voluntarily or involuntarily, to any Klan activities.[14] The Justice Department started aggressively prosecuting individuals across the South under the Enforcement Acts. The Supreme Court, however, had yet to weigh in on the debate whether the Constitution backed the Enforcement Act or not. The Courts needed to legitimize the Act for the southern states to accept it.

Chapter Two analyzes the Eutaw Riot, involving Democrats and Republicans, as well as the difficulties of bringing white southerners to justice under the Reconstruction Amendments. The new legislation Congress implemented to help bring criminals to justice directly impacted both the riot and the following failure of the state justice system. Seven months after members of the Ku Klux Klan killed Alexander Boyd, a political riot broke out at the courthouse in Eutaw. Democrats and Republicans both held political rallies within yards of each other on the same day. With political tension in the air and citizens anticipating the following month's election, gunshots broke out and a mass riot began. The details were never completely sorted out, because the witnesses divided quite clearly along party lines. Whites were brought to trial in federal court in *United States v. Hall*, but the trial stalled because of a lack of cooperation by witnesses who feared violence. One of those witnesses was a United States Congressman, Charles Hays, who resided in the town of Eutaw. Hays, a former Confederate soldier and now considered a Scalawag Republican, refused to testify. [15] Eventually the Justice Department forced Hays into testifying against the Democratic defendants in the case.

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[14] Enforcement Act of April, 20, 1871 Quoted in Wang Xi, *The Trial of Democracy*, 288-291; Williams, *Ku Klux Klan Trials*, 42.

[15]Melinda Meek Hennessey, "Political Terrorism in the Black Belt: The Eutaw Riot," *The Alabama Review: A Quarterly Journal of Alabama History* 33 (January 1980): 35-48.

U.S. v. Hall, one of the earliest Fourteenth Amendment cases, required the Justice Department to use the first Enforcement Act of 1870 to indict the defendants. Chapter Three delves deeper into the legal impact of Reconstruction and the federal court case that stemmed from the riot. The Reconstruction Amendments and the Enforcement Act, while meant to help the Republicans bring Democrats to justice, failed. These failures had far-reaching impacts on the legal history of Reconstruction as a whole. Federal Circuit Judge William B. Woods, who heard the case, knew that this particular case, the first to be tried under the newly merited federal regulations, had the potential to define the legal doctrine surrounding the Enforcement Act, the Fourteenth Amendment, and the Bill of Rights. Woods consulted with Justice Joseph P. Bradley of the United States Supreme Court in hopes of adequately defining the law. The correspondence between the two judges and Judge Woods' opinion to the court and to the jury provided a broad nationalistic interpretation of the Fourteenth Amendment that defined and incorporated the Bill of Rights' meaning into all three pieces of legislation. In other words Woods defined citizenship and rights via the Fourteenth Amendment. This opinion gave blacks the same rights as their white counterparts. Woods believed the privileges and immunities provided by the Fourteenth Amendment were in fact the same rights protected by the Bill of Rights. With this link established blacks could then expect the protection of the federal government from both the state and individuals trying to prevent the freedmen from exercising their rights.

State governments were never likely to actively protect black citizens, but the broad nationalistic interpretation of the Fourteenth Amendment gave the federal government the authority to circumvent the states and to fully protect all aspects of black citizens' rights by providing protection from both state action and individual action. When the federal courts refused to follow the *Hall* precedent in *Slaughterhouse* the opportunity to define the Fourteenth

Amendment in this broad view was lost. *Hall* provided a rare opportunity in which the federal government could wrap the Fourteenth Amendment completely around the rights of black citizens; it *could* have been a major advancement towards Democracy.

Unfortunately, the higher courts in later cases did not agree with Justice Bradley and Justice Woods. In fact, both justices later reversed their opinions in defining the broad interpretation of the Fourteenth Amendment. These later courts ruled that the Fourteenth Amendment applied to state action only, not to the actions of individuals and thus could not directly apply the Bill of Rights to the States. Without a direct link between the Fourteenth Amendment and the Bill of Rights, and with the state governments' refusal to protect their black citizens, the federal government was powerless to insure the rights of the former slaves. There was no provision in the Constitution which guaranteed former slaves any protection from individuals. *U.S. v. Hall* provided a small window of opportunity in which the opinion of the court was malleable enough to define the Fourteenth Amendment in a manner which guaranteed and protected the rights of citizens from both state and individual action. Instead the court set precedents against equal rights in *Slaughterhouse* that took almost a century to overturn.

The events discussed are just three of many other violent incidents that occurred in the town of Eutaw during Reconstruction. But they demonstrate the possibility of a judicial interpretation strong enough to provide protection for the freedmen and protect the Republican Party. Reconstruction era Eutaw provides scholars the story of Reconstruction on a smaller scale. Though the actions in Eutaw may seem exaggerated compared to all other southern communities, these extreme actions are what caused the ultimate failure of Reconstruction.

The story of Reconstruction on a grand scale has been widely written and thoroughly revised by many scholars. Early scholars followed William Archibald Dunning's *Essays on the*

Civil War and Reconstruction. Published in 1897, this work was a pro-southern, racist view of Reconstruction. However, historians used it as a basis for scholarly research for several decades. Dunning focused on the Constitutional view of the Civil War and Reconstruction. A student of Dunning's, Walter Lynwood Fleming, published *Civil War and Reconstruction in Alabama* in 1905. Although it follows the Dunning school of thought, Fleming's work stands alone. No other in-depth study of Reconstruction in the entire State of Alabama has been published since. Fleming begins his analysis long before Reconstruction, during the "sectional controversy" of the 1850s. Dunning's work no doubt influenced Fleming's, as evidenced by Fleming's categorically pro-southern stance. An example: "White men were often members of the board of colored schools. All this was before the negro was seen to be hopelessly in the clutches of the northerners" and "The people of the north Alabama white counties…were opposed to any form of negro suffrage…[t]he Black Belt people who had less prejudice against the negro and who were sure that they could control him and gain in political power, were more favorably inclined."[16] Although Fleming's work remains the sole history of Alabama during Reconstruction William Warren Rogers, Robert David Ward, Leah Rawls Atkins and Wayne Flynt covered the history of Alabama from pre-colonization through the end of the Twentieth Century in *Alabama: The History of a Deep South State* (1994) but devoted only a brief section to Reconstruction as a whole.

It took fifty years for historians to overturn the Dunning school. C. Vann Woodward's *Origins of the New South*, (1951) Kenneth Stampp's, *The Era of Reconstruction* (1965), and Allen W. Trelease's *White Terror: The Ku Klux Conspiracy and Southern Reconstruction* (1971)

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[16] Walter L. Fleming, *Civil War and Reconstruction in Alabama* (New York, Columbia University Press, 1905):62; 626; 388.

all helped to revise the image of the evil Carpetbagger and the victimized white southerner. All bring to light the violent actions of Southern Democrats. These works place blacks in the story as important participants who cannot be ignored, not as mere character actors victimized by the actions of the whites in both the North and the South. These revisionists thus gave blacks historical agency.

In his definitive work on Reconstruction, Eric Foner continued with the revisionist findings and devoted part of his 1988 tome *Reconstruction: America's Unfinished Revolution 1863-1877* to southern society. Foner takes on race directly, stating, that "Instead of viewing racism as a deus ex machine that independently explains the course of events and Reconstruction's demise, I view it as an intrinsic part of the process of historical development, which affected and was effected by changes in the social and political order." [17] Foner's approach directly impacted this study, as it views race as intrinsically linked with the legal battles during Reconstruction.

The town of Eutaw has made appearances in some of the broad works of Reconstruction. Eutaw is mentioned in Trelease's work on the Ku Klux Klan, for example. However, Trelease uses the riot as an example of the violence that appeared commonly in the area. He does not consider the legal consequences of the *Hall* case. Foner mentions the Eutaw Riot, but only briefly as an example of violence throughout the whole South. But there are lessons to be learned from Eutaw about the reaction in the courts and the legislation on the national scale.

While Eutaw has been the focus of a few scholars' works, none closely examine the far-reaching effects of the violent events. *The Alabama Review* featured William Warren Rogers

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[17] Eric Foner, *Reconstruction: America's Unfinished Revolution 1863-1877* (New York, Harper & Row, 1988), xxiv.

Jr.'s "The Eutaw Prisoners: Federal Confrontation with Violence in Reconstruction Alabama." (1990) Rogers discusses the trial of the Eutaw prisoners, arguing that this episode was significant, because the Third Military District convicted several whites for violence against Republicans in a time that many civil juries were afraid to do so because of the Ku Klux Klan's threats.[18] However, a major question remains unanswered: when such precedents had been set, why did Meade reverse the decision and then pardon the prisoners?

Perhaps the Eutaw Riot has earned the attention of historians, most comprehensively in "Political Terrorism in the Black Belt: The Eutaw Riot" (1980) by Melinda Meek Hennessey. Hennessey details the riot and touches on its effects on the following election, focusing primarily on the eventual success of the Democratic Party.[19] A short history of Eutaw is given in a speech by Mrs. Cecil R. Glass entitled the "Early Days of Eutaw."(1965) Glass mentions the same courthouse that provided the location of the riot and the burning of that courthouse a year earlier. Glass provides a brief glimpse into the makeup of the town of Eutaw but does not delve into the significance of the town to the legal history of Reconstruction.[20]

Christopher Waldrep shows in "Joseph P. Bradley's Journey: The Meaning of Privileges and Immunities" (2009) how Supreme Court Justice Joseph P. Bradley changed his interpretation on the Fourteenth Amendment's privileges and immunities clause. Waldrep analyzes correspondence between Bradley and his colleague William Woods, the judge who heard the case of *United States v. Hall*. Though Waldrep mainly focuses on Bradley, he provides insight

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[18] William Warren Rogers Jr, "The Eutaw Prisoners," 99.

[19] Melinda Meek Hennessy, "Political Terrorism in the Black Belt," 48.

[20] Mrs. Cecil R. Glass, "Early Days of Eutaw," *The Alabama Review: A Quarterly Journal of Alabama History* 18 (January 1965): 56.

into how the Supreme Court leaned at the time and how the decisions for later verdicts like the *Slaughterhouse Cases* would eventually come down.[21]

William Warren Rogers wrote an in depth article on the murder of Alexander Boyd. In "The Boyd Incident: Black Belt Violence During Reconstruction," (1975) Rogers details the town of Eutaw and the men involved both directly and indirectly. Rogers discusses William Miller, Boyd's uncle and Charles Hays, a Republican Congressman, two men who were both heavily involved in the affairs of the town of Eutaw. The governor eventually learned of the murder and sent an investigator. Rogers goes though the later investigation of both that murder and previous violence that occurred in Greene County. [22] Rogers sufficiently describes the events of the murder and the direct consequences afterwards. The town begged the governor for protection, which he provided by sending the military to Greene County. Rogers goes no further in investigating the outcome.

Very few historians have looked at the lower-level courts during Reconstruction. Most judicial accounts focus on the Supreme Court and the verdicts and precedents handed down. However, the lower courts were where many of the legal battles of Reconstruction took place. The lower-level circuit courts across the South tried numerous cases of violence involving Klansmen. It was the lower- level courts that first attempted to use the Enforcement Acts to enforce the Fourteenth Amendment and link it with the Bill of Rights. These courts had many successes, and even their failures produced legal precedents that reflected the opportunities of

[21] Christopher Waldrep, "Joseph P. Bradley's Journey: The Meaning of Privileges and Immunities," *Journal of Supreme Court History* 34 (July 2009): 158.

[22] William Warren Rogers, "The Boyd Incident," 314.

Reconstruction. By focusing on the federal circuit courts, historians can see where Reconstruction might have led the United States. [23]

Obviously, when analyzing the decisions of the Supreme Court and its appellate courts, the Constitution becomes the most relevant resource. Looking at the Fourteenth Amendment, with its privileges and immunities clause and how these events fit into the Fourteenth Amendment's broader picture gives historians an idea of the effects of Reconstruction. The social impacts are better highlighted when analyzing a smaller section of the country. Focusing on Eutaw, Alabama and how the citizens of the town reacted to Reconstruction, the Fourteenth Amendment, and the Enforcement Act, gives historians a glimpse into why Reconstruction failed, and what could have been changed to prevent its collapse.

This work will look closely at the federal government's attempts to bring the Klan to justice in a small Alabama Black Belt town. It demonstrates the possibility for an entirely different interpretation of the Reconstruction Amendments– one that would have had a much better chance of enforcing black rights for the long haul.

[23] For other studies on lower level federal cases see Kermit L. Hall, "The Reconstruction Era as a Crucible for Nationalizing the Lower Federal Court," *Prologue 7* (Fall 1975): 177-186; Stephen J. Riegel, "The Persistent Career of Jim Crow: Lower Federal Courts and the 'Separate but Equal" Doctrine, 1865-1896." *American Journal of Legal History* 28 (January 1984): 17-40.; Lou Falkner Williams, *The Great South Carolina Ku Klux Klan Trials, 1871-1872* (Athens, The University of Georgia Press, 1996), 1-244.

Chapter 1 - "Have Mercy and Send Some Protection"

Eutaw, Alabama became relevant to the broader story of Reconstruction almost immediately after the Civil War. In many ways the Alabama town directly reflected events happening on a larger scale in the southern United States. Every new era in Reconstruction, new piece of legislation, or argument made by northerners and southerners alike, reflected directly back on events taking place in Eutaw. The town of Eutaw saw guilty Klansmen pardoned because of public outrage, a state attorney murdered in cold blood with no arrests made, and a general fear on the part of Republicans for their rights and their safety. Eutaw was full of the Ku Klux Klan, rotten politicians, a deteriorating state legal system, and terrified former slaves. The town provides the perfect lens through which to view Reconstruction. Eutaw was the scene of many missed opportunities during Reconstruction, judicially, legally, and constitutionally.

It is important to understand events that unfolded in and around Eutaw, because the town itself was a singular piece in a larger puzzle. Reconstruction began in the halls of Congress, not in the small Alabama town. Yet the legislation handed down from Congress, and the reaction of southerners to that legislation, became vitally important to the story of Reconstruction as a whole. Reconstruction was contingent upon the reaction and cooperation of the citizens of the southern states. By focusing on this microcosm, Eutaw gives historians a lens through which to view the time period. Eutaw and its citizens were directly affected by events that the region as a whole faced.

Eutaw's most important role in Reconstruction, however, is held not within important events but in actions that did not occur. The town of Eutaw saw events transpire which gave the federal government an opportunity to take the newly formed Reconstruction Amendments, specifically the Fourteenth, and grant African Americans the equal rights of citizenship. *United*

States v Hall provided the first opportunity in which the federal government could directly link the Bill of Rights and the Fourteenth Amendment. The *Hall* case produced an unprecedented interpretation of the new amendment, a broad, nationalistic interpretation that would benefit the freed slaves, and potentially alter the course of Reconstruction. While *U.S. v Hall* was the first instance in the courts to protect the rights of the former slaves within the framework of the Fourteenth Amendment, its overall legacy is one of missed opportunity. After *U.S. v Hall* numerous other circumstances arose for the courts to interpret the Fourteenth Amendment, but the Eutaw Riot and the subsequent court case remained the prime example of the federal courts' willingness to interpret the new Amendment with a sweeping protection of black rights. When reviewing the legal history of Reconstruction, *Unites States v Hall* furnishes the pivotal moment in which to examine what might have been.

On April 9, 1865 the Civil War effectively ended when General Robert E. Lee surrendered to General Ulysses S. Grant. No American at its onset dared to imagine a more gruesome, hard-fought, and bloody war. When southerners finally laid down their weapons after four years of grisly battle, the motivations of both North and South became clear. The sections were driven to battle by apparently different causes– in truth both northerners and southerners fought because of slavery. With the Emancipation Proclamation in 1863 the North shifted focus from maintaining the Union to abolishing slavery. The South fought for the doctrine of states' rights–principally the right to hold slaves as property.

After four years of conflict, southerners lost the war and their slaves, but their attitudes toward the freed slaves remained. Long before the war the South was built on a foundation of honor. Bertram Wyatt-Brown's *Honor and Violence in the Old South* explains that "[f]rom the start, slavery and honor were mutually dependent. After emancipation in 1865, honor, like the

labor system that had nourished it, lived on in truncated yet vigorous form, especially with regard to laws and practices that perpetuated the humiliation and subjugation of black people…"[1]

The War freed the blacks but it left in its wake a crippled society. The war destroyed the South's social and economic foundation and white southerners possessed no desire to build a new one. Because the South held slavery at its core, the United States after the Civil War had to rebuild the southern states from the ground up, not an easy task with so many unwilling participants. The end of the war brought about the onset of this period of Reconstruction. Reconstruction consisted of several stages all fraught with tension and violence. The period made long strides within the Constitution especially in the areas of constitutional doctrine for the advancement of freedmen and women throughout the country, only to have these advancements diminish and fail miserably in the end.

Lincoln's plan for reconstructing the South ended with his assassination. Before the end of the War, Lincoln and his advisors formed a plan for re-admitting the southern states. Lincoln's "Ten Percent Plan" was lenient and probably unworkable, but he had the support of some of the Radical Republicans in Congress. Assassination angered many Republicans who were not as supportive of Lincoln's vice president and his successor, Andrew Johnson. Johnson's more moderate views on presidential pardons and state government infuriated the more Radical Republicans in Congress at the time. The governors in the southern states appointed by Johnson faced difficulty in staffing their states' offices. The Ironclad Oath, which stated that an individual had never aided the Confederate government, kept many southerners from being able to take office or sit on juries. It proved difficult to find many white southerners who in some way or

[1] Bertram Wyatt Brown, *Honor and Violence in the Old South* (New York: Oxford University Press, 1986), ix.

another had not helped the Confederacy. Many southern governors were forced to ignore or purposely disregard this rule and appoint leaders who would support their policies. [2]

With the southern governments back in the hands of secessionists, labor became the next hurdle to overcome. Many former Confederates questioned the new labor force. "Black Codes" became prevalent throughout many southern states. As historian Eric Foner writes, Black Codes attempted "to stabilize the black work force and limit its economic options apart from plantation labor."[3] Many blacks signed labor contracts and if they violated the contract they would forfeit their wages. Any citizen of the state could arrest a black laborer, and vagrancy could be defined as misspending of their own wages.[4] The abolition of slavery in no way created equal rights for blacks since these Black Codes gave southern whites the opportunity to recreate as closely as possible the conditions of slavery.

The Congressional elections of 1866 brought to power many Radical Republicans, including men like Thadeus Stevens and Charles Sumner, who had always spoken out against slavery. These Radicals believed Johnson's policies too lenient toward the South. In an attempt to chasten the southern states, Congress in the 1867 Military Reconstruction Act divided the South into five military districts, claiming that southern states "are not ready for reconstruction as independent states on any terms or conditions which Congress might impose."[5] The acceptance of the Fourteenth Amendment became a condition for readmission to the Union; this was the very same amendment southern states had previously rebuked.

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[2] Eric Foner, *Reconstruction: America's Unfinished Revolution: 1863-1877* (New York: Harper & Row, 1988), 188.

[3] Ibid., 199.

[4] Ibid.

[5] *United States Congressional Globe*, 39th Congress, 2d Session, Appendix, 78.

With the passage of the Thirteenth Amendment in January 1865 many ardent abolitionists and moderate Republicans in the North believed the battle for abolition complete. Yet some, including the black leader Frederick Douglas, believed that abolition could only be successful with the establishment of black suffrage.[6] The South demonstrated that merely ending the enslavement of blacks did nothing to provide them equal rights. Congress used the following Fourteenth Amendment not only as a filter for the newly formed state governments but also, and more importantly, to declare freed blacks citizens of the United States. This declaration effectively overturned *Dred Scott (1857),* in which the Supreme Court stripped African Americans of any right to citizenship. The Fourteenth Amendment made clear that U.S. citizenship was paramount to state citizenship.

The few words of the Privileges and Immunities clause of the Fourteenth Amendment, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States…"[7] were among the most debated within the Constitution until *Slaughterhouse (1873)* later emasculated the clause.[8] The framers' choice to word the clause negatively and focus on the states rather than individuals gave southerners leeway in finding ways around the new amendment. This development led Congress to pass a third and final Reconstruction Amendment– the Fifteenth– which the states ratified on February 3, 1870. The Fifteenth Amendment, like the Fourteenth, is written in the negative, requiring that neither the United States nor any state within could deny a citizen the right to vote "on account of race, color, or previous condition of servitude." Southerners again found ways around the amendment

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[6] Eric Foner, *A Short History of Reconstruction: 1863-1877*. (New York: Harper & Row, 1990), 31.

[7] U.S. Constitution, 14th Amendment, sec. 4.

[8] *Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co. et al.,* 15 F. Cas. 649 (C.C.D. La., 1870).

when the courts ruled that individuals acting without state sponsorship could not be held responsible for infringing on black suffrage.[9]

When the amendments failed to protect blacks in the South, the Congress turned toward enforcing these amendments with appropriate legislation. The Enforcement Acts gave Congress the power to prosecute individuals despite the state action provision of the Fourteenth Amendment. With the Enforcement Acts came a means of repressing the wave of violence perpetuated across the South by the Ku Klux Klan. This group of radical southerners quickly spread across the South, threatening and often following through on violence against both black and white Republicans. The key section in the First Enforcement Act of 1870 allowed the U.S. to prosecute whenever "two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States."[10] Finally, Congress had given the United States government the power to protect the rights of citizens against individual action.[11]

With the Third Enforcement Act in 1871— more popularly known as the Ku Klux Klan Act— Congress assumed the power to send in federal troops to stop the violence of the Klan and to prevent anyone connected with the Klan from serving on juries. This newly established power

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[9] U.S. Constitution, 15th Amendment, sec 1.

[10] Thomas Joseph Baldwin and Kyle L. Kreider, *Of the People, by the People, for the People: A Documentary Record of Voting Rights Reform, Volume 1* (Santa Barbara: Greenwood, 2010), 86.

[11] The initial indictments in *U.S. v Hall* were written, framed and filed in October, 1870 with the first trial beginning in April, 1871. Due to a lack of witnesses the trial was postponed until January, 1872. The South Carolina Klan trials began in late 1871 in the interim of the two *Hall* trials and ran into 1872. For a more detailed account see Lou Falkner Williams, *The Great South Carolina Ku Klux Klan Trials: 1871-1872* (Athens: The University of Georgia Press, 1996.

led to a wave of prosecutions under the Enforcement Act; the South Carolina Klan trials of 1871 and 1872 were the most ambitious and unprecedented. President Grant used his legal power to suspend Habeas Corpus in nine South Carolina counties and, as a result, the federal government arrested hundreds of Klansmen.[12]

While the national government attempted to create legislation to enforce the rights of black citizens, some people in the South took action themselves. Frederick Douglass once said, "What shall we do with the Negro? Do nothing… give him a chance to stand on his own legs! Let him alone!"[13] With that same spirit in mind, Union or Loyal Leagues developed throughout the South. Initially formed to help the cause of the Union during the Civil War, these Loyal Leagues morphed into organizations dedicated to help the freed blacks stand alone. Unwilling to accept the civil rights of the newly freed slaves, whites typically abhorred the Leagues. However, Greene County, Alabama, was different. One of the wealthiest counties in the state when the war broke out, Greene County owed most of its prosperity to slavery. As of 1870, 7,251 whites resided in the county, but blacks outnumbered whites three to one with a total population of 23,598.[14] Not surprisingly, planters hoped to control both the politics and the employment opportunities of their former slaves.

What makes Greene County particularly interesting was how the white residents dealt with Reconstruction and the enfranchisement of the blacks. Instead of fighting the Leagues, many landowners by the summer of 1867 had actually joined the Leagues, hoping thereby to

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[12] Lou Falkner Williams, *The Great South Carolina Ku Klux Klan Trials: 1871-1872* (Athens: The University of Georgia Press, 1996), 46.

[13] Eric Foner, "Rights & the Constitution in Black Life during the Civil War and Reconstruction," *The Journal of American History* 74 (December 1987): 881.

[14] William Warren Rogers Jr, "The Eutaw Prisoners: Federal Confrontation with Violence in Reconstruction Alabama," *The Alabama Review: A Quarterly Journal of Alabama History* 43, (April1990): 99.

control the blacks from within.[15] When blacks were not so easily controlled, the majority of whites initiated a new plan; political threat and social ostracism forced many white Republicans out of both the Loyal League and the Republican Party.[16] Whites also exerted pressure on the freedmen "to leave the League, rather than trying to neutralize its political impact from the inside," according to historian Michael Fitzgerald.[17] By 1870 fewer than twelve white Republicans were left in Greene County.[18] The few white Republicans who remained in the Union League successfully used Republican politics both "to secure a more contented work force" and to maintain themselves in office.[19] Indeed Fitzgerald observed that "planter-scalawags certainly received a proportion of offices far beyond their minuscule percentage of the republican electorate."[20]

Two of the richest men in the county led the Greene County, Alabama League – one of those men being Republican Congressman Charles Hays. A former secessionist, Hays served in the Confederate Army during the war. In 1870 Hays owned only half of the land he owned in 1860, yet he still ranked among the top thirteen landowners in the state.[21] Hays joined the

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[15] Michael W. Fitzgerald, *The Union League Movement in the Deep South: Politics and Agricultural Change During Reconstruction* (Baton Rouge: Louisiana State University Press, 1989), 203.

[16] Fitzgerald, *Union League Movement*, 207.

[17] Ibid.

[18] Warren Rogers, "The Boyd Incident," 313.

[19] Testimony of Benjamin Leonard, , United States Congress, *Report of the Joint Select Committee to inquire into the Condition of Affairs in the Late Insurrectionary States*, 13 vols. (Washington, D.C.: U.S. Government Printing Office, 1872) (hereafter cited as KKK Reports), Alabama 10: 1792; Fitzgerald, *Union League Movement*, 204.

[20] Fitzgerald, *Union League Movement*, 206.

[21] Jonathan M. Wiener, *Social Origins of the New South Alabama, 1860-1885* (Baton Rouge: Louisiana State University Press, 1978), 12.

Republican Party in 1867 and then promptly ran for Congress.[22] Hays held Republican meetings at his plantation, Hays Mount, which added to Democrats' dislike of him.[23] Congressman Hays also garnered support from his Republican followers, black and white, by paying the high bonds, which were fees public officials had to pay before running for office. Hays then used the favor to leverage votes.[24]

Considering Alabama as a whole, citizens became Republicans for obvious reasons, according to historian William Cash: twenty-six percent of Republicans consisted of former slaves, former Union Whigs composed twenty-two percent, and northerners made up thirty percent.[25] This leaves twenty-two percent for opportunistic planters who saw the benefit of joining the Republican Party and using their means to work themselves into important political offices. Close to half of the state legislators in 1868, whose military background could be traced, were former Confederate soldiers. Often, former Confederates ran for office as Republicans in Greene County, and in 1870 "a Republican newspaper proudly boasted… of a one legged Confederate soldier…as [a] legislative [nominee]." [26] These white Republicans, though few in number, organized the former slaves expertly. For the time being, Republicans therefore controlled the Greene County government.[27]

Those white Republicans who had joined the League to help the freedmen fell lax on their job. William Miller, the Republican judge for Greene County, saw so many contracts as

[22] Foner, *Reconstruction*, 297.

[23] Warren Rogers, "The Boyd Incident," 314.

[24] Fitzgerald, *Union League Movement*, 206.

[25] Cash, *Alabama Republicans*, 162.

[26] Ibid, 262.

[27] Warren Rogers Jr.,"Eutaw Prisoners", 100.

damaging to blacks that he simply refused to adhere to them.[28] With only a few powerful white Republicans left, the political parties divided primarily according to color.

In the 1868 election– the election that ratified the new Alabama constitution as required by Congress– Republicans were "generally deterred" from voting.[29] The black majority of Republicans faced insurmountable intimidation at the polls. In Eutaw, the county seat of Greene County, "rowdies tore the constitutional option off some ballots during the election and forced some polls to close temporarily."[30] The new state constitution created another source of tension between the Republicans and Democrats. It reminded the former Confederates of their defeat and symbolized the new society, which they feared. They did everything in their power to fight a state constitution that banned slavery. *The Mobile Daily Register* declared, "Now, it is the well settled determination of the planters not to work their lands beyond the mere production of food for their own families if the Constitution is ratified."[31] When a local Alabama paper printed the Constitution of the United States without the newly ratified Fourteenth Amendment, the Democratic newspaper did not mince words: "That document is the Constitution of the United States—we mean the Constitution as it appears upon the national records, in its unmutilated form, and before the Radical Iconoclast had so deformed it that were its patriotic authors to rise from their graves, they would not recognize it as the work of their hands."[32]

Democrats greatly feared a lack of control over the black vote. With the 1868 election and Republican Governor Smith's support, the Alabama legislature passed legislation outlawing

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[28] Fitzgerald, *Union League Movement*, 107.

[29] Testimony of William Miller, *KKK Reports*, Alabama, 8:1.

[30] Warren Rogers Jr., "Eutaw Prisoners," 100.

[31] Malcolm Cook McMillian, *Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism*. (Lexington: The University Press of Kentucky, 1997), 164.

[32] "The Constitution of the United States," *Mobile Daily Register*, May 3, 1871.

the use of voter registration lists. Both Democrats and Republicans feared that voter registration would cause fraud at the polls. Walter L. Fleming, Alabama's Dunning era historian believed the lists—which were not comprehensive—were created to keep former Confederate whites from the polls.[33] After registration lists could no longer be required for black voters, the fear became that "after this a negro might vote under any name he pleased as often as he pleased."[34] As *The Mobile Daily Register*, a notoriously Democratic newspaper in Alabama wrote of the 1868 election,

> We learn that numbers of negroes were imported here, and rushed around from one place to another, and made to vote again and again. Under the present infamous and farcical election laws it was not possible to challenge their votes or protect the purity of the ballot box from these bare faced frauds: and as for trying to identify any negro as having voted before, it was next to impossible, for negro faces are as much alike as so many cocoanuts [sic], and it is out of the question to try and distinguish any one of them, particularly under the circumstances.[35]

Despite Democratic fears—and Dunning interpretations--the reality was that white Democrats practiced voter fraud far more often than their black Republican counterparts. And even if Democrats laid the charges of fraud at the feet of white Republicans, Democrats watched and patrolled the polls with such vigor that many blacks could not cast a vote successfully one time– let alone multiple times.[36]

Any vote other than one for the Democratic ticket might provoke violence and intimidation, and Democrats did not just target blacks. The white people of Greene County and

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[33] Walter L. Fleming, Civil War and Reconstruction in Alabama (New York: Columbia University Press, 1905), 749.

[34] Ibid.

[35] "A Peaceful Election," *Mobile Daily Register*, Nov. 9, 1870.

[36] Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (Baton Rouge: Louisiana State University Press, 1971), xxix.

Eutaw also lived in fear; as one resident reported, "My honest opinion is this: generally in Greene County, if every man had his own way they would generally vote the [R]epublican ticket. I have no doubt of that fact."[37] Civilians and government officials alike faced the threat of violence by these Democrats and "one result of…pressure or of ostracism was a large number of resignations by officeholders."[38]

This pressure came from Democrats throughout the South as well as Greene County. Masked riders rode often in Greene County. Local newspaper reports seem to indicate that the Ku Klux Klan officially formed in Greene County after the February 1868 election.[39] However, witnesses spotted Klansmen in Greene County not long before President Grant's election in November 1868. Therefore the election itself holds no responsibility for the Klan's initial progression across the State of Alabama, although the election may have been a catalyst for its growth afterwards.[40] Alabama seems to have been the first state outside of Tennessee in which the Klan spread widely. After the first few years, the Klan settled into key areas within the state, the Black Belt being one.

John Hunnicutt and J.J. Jolly are two of the whites who worked together to establish the Klan in Greene County and neighboring Hale county. Writing in his memoirs years later, Hunnicutt recalled, "we had a few men who had nerve enough to come out bold and open and fight these fellows (Rep) and show their crookedness."[41] Jolly was a prominent Democratic

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[37] Testimony of Benjamin Leonard, *KKK Reports*, Alabama, 10:1791.

[38] Cash, *Alabama Republicans*, 339.

[39] Trelease, *White Terror*, 81.

[40] Testimony of Benjamin Leonard, *KKK Reports*, Alabama, 10: 1790.

[41] John L. Hunnicutt, *Reconstruction in West Alabama: The Memoirs of John L. Hunnicutt* (Tuscaloosa: Confederate Publishing Company, Inc., 1959), 58, 47.

lawyer from Eutaw.[42] Records show that only one Jolly lived in the area at the time, so there is no doubt about the lawyer's connection with the Klan in Greene and neighboring counties.[43] Hunnicutt very likely burned down the Greene County courthouse in Eutaw on March 20, 1868, at the instruction of Jolly.[44] Members commonly burned courthouses to protect Klansmen from any evidence that might be stored within these government buildings. Jolly, being a lawyer for many Democrats, would have had access to information regarding prosecutions.

Jolly and Hunnicutt represented the key demographic of Klansmen. In fact, according to historian Michael Fitzgerald, "in terms of social composition, the terrorist movement seems broadly based among native rural whites, both in numbers and class background."[45] Many Klansmen initially hoped to make a difference politically and the organization paralleled the Democratic Party. Eventually, this parallel "ceased to exist in ferocity. It became simple racial mayhem, with a more tenuous connection to electoral considerations."[46] The Klan in Black Belt Alabama and especially Greene County began to act as individual units with very little synchronicity across the state.[47]

The Klan worked to uphold southern honor as well as the political and racial status quo. Men who wanted to enact vengeance or defend themselves from an insult might have the backing of these vigilante riders. Any insult on one's character or the appearance of exerting power– whether political or physical– over a man could result in his honor being insulted. Insults

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[42] Ibid, 56.

[43] Testimony of Arthur Smith, *KKK Reports,* Alabama, 8: 62.

[44] Trelease, *White Terror*, 83.

[45] Michael L Fitzgerald, *Splendid Failure: Postwar Reconstruction in the American South* (Chicago: Ivan R. Dee, 2007), 67.

[46] Fitzgerald, *Splendid Failure*, 68.

[47] Trelease, *White Terror*, 226.

could not be tolerated, because "a man was what public opinion held him to be. Fear of being shamed, more than conscience or guilt, dictated Southerners' behavior."[48]

Whatever their motives, Alabama Klansmen rarely faced the consequences of their actions. Few cases went to trial and even fewer convicted Klansmen for any act of violence or intimidation during Reconstruction.[49] Witnesses found it difficult to testify against an organization that many people claimed did not even exist. Congress formed a Joint Committee to look into the affairs of the southern states. The committee conducted the most in depth investigation into the South up to that period and published their findings in 1872. They interviewed hundreds of southern citizens and produced thirteen volumes (over 7,000 pages) of testimony in minute print. Three volumes (over 2,000 pages) were dedicated specifically to events in Alabama. Within these pages witnesses, both Republican and Democrat, white and black, Klansmen and victims, describe the events in the South after the end of the war providing the most extensive collection of firsthand accounts recorded during Reconstruction. When this Congressional Committee questioned Jolly, he not only denied the presence of the Ku Klux Klan in Greene County but denied its existence anywhere in the country: "I will state that, so far as my information goes, and it is pretty general throughout that section of the country, I do not believe that the Ku-Klux organization, or anything that assimilates to the character given to that organization, has ever existed in that section of country, or does now exist there."[50] Klan leaders across the state joined Jolly in denying the existence of the organization. Newspapers run by known Klansmen tried to "explain the [K]lan away," because they believed that acknowledging

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[48] Williams, *Ku Klux Klan Trials*, 31; Wyatt-Brown, Bertram, *Southern Honor: Ethics and Behavior in the Old South: 25th Anniversary Edition* (Cary: Oxford University Press, 2007), 43.

[49] Trelease, *White Terror*, 87.

[50] Testimony of J.J. Jolly, *KKK Reports,* Alabama, 8: 265.

its existence would mar the already imperfect image that the rest of the country had of the South.[51] Nevertheless, the KKK Reports stand today as solemn witness to the condition of the South during Reconstruction.

Despite the Klan's denial of its existence many Republicans saw the pattern of lies that emerged as William Miller, for one, complained to the Congressional Committee that the "assaults and murders…[arose] out of political cause."[52] When asked if he thought "it was the [F]ourteenth [A]mendment, together with the [R]econstruction [A]cts of Congress, what is generally embraced in the term reconstruction policy of Congress, [that] gave dissatisfaction," the former Governor of Alabama, Robert Lindsay, replied that "It gave great dissatisfaction."[53] John Minnis, the United States attorney for Alabama, believed that the Klan's acts arose from the same mindset that brought about secession.[54] Another Alabamian thought that politics had become so violent, because of the "long continued indulgence of passions, accompanied by a conviction that the Southern people are the most grossly wronged and outraged people on the face of the earth."[55]

Opinions of the Klan often divided along party lines. The Klan represented an unofficial Democratic body, the "terrorist arm of the Democratic Party", as historian Allen Trelease labeled it.[56] Democrats in Greene County believed it was their responsibility to keep blacks and Republicans in their "proper" places. They believed the federal government was too strong and

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[51] Carl. R. Osthaus, *Partisans of the Southern Press: Editorial Spokesmen of the Nineteenth Century* (Lexington: The University Press of Kentucky, 1994), 130.

[52] Testimony of William Miller, *KKK Reports*, Alabama, 8: 6.

[53] Testimony of Robert Lindsay, KKK Reports, Alabama, 8: 202.

[54] Robert J. Kaczorowski, The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights, 1866-1876 (New York: Fordham University Press, 2005), 44.

[55] Testimony of Samuel F. Rice, *KKK Reports,* Alabama, 8: 507.

[56] Trelease, White Terror, xlvii.

the Alabama government was unfairly forced to accept these radical terms regarding blacks. One white Republican received a letter from the Klan after an election, which read, "We send you a copy of the Bible and a strong rope! Ask your friends (if you have any) to assist you. Should you return… we will try and have [you] viewed from the standpoint you deserve."[57] Many Republicans obviously feared the Klan and the repercussions of voting the Republican ticket. In regard to punishment of members of the Klan, another Eutaw citizen said, "Whenever you shall convince them that there is a power which can take cognizance of their crimes and punish them, you will put a stop to them. And you will find a very large body of people at once ready to rally to your support."[58]

From the very beginning of Reconstruction, Eutaw faced challenges with both Democrats and the Ku Klux Klan. In 1868 Republican William Miller was elected the new Judge of Probate, but because Democrats considered the new laws and state constitution null and void, the former Judge, Democrat William Oliver, refused to give up his seat and Miller asked the Governor of Alabama for assistance.[59] Judge Oliver approached J.J. Jolly and William Morgan, two prominent lawyers in Eutaw, for their assistance in keeping his position. According to Judge Miller, these two lawyers believed that they had a case for keeping Judge Oliver in office, but they later denied any legal basis for these opinions.[60] Democrats consulted Jolly again in 1870, when the incoming Democratic governor, Robert Lindsay, attempted to take office and his Republican counterpart William Smith, refused to leave.[61] Democrats across the county attempted everything within their power to gain control of the state government. The people of

[57] "The Ku-Klux Law," *Mobile Daily Register*, April 27, 1871.

[58] Testimony of William Warner, *KKK Reports*, Alabama, 8: 33.

[59] Testimony of William Miller, *KKK Reports*, Alabama, 8: 1.

[60] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 278.

[61] Testimony of Lewis E. Parsons, *KKK Reports*, Alabama, 8: 100.

Eutaw considered Jolly a prominent Democratic lawyer, but he was also a member of the Klan who could work outside the law. The efforts of the Democrats prevailed when their Republican counterparts left office; the unofficial efforts by the Klan demonstrated the widespread use of this southern logic.

Miller, now the Probate Judge in Eutaw, Alabama, faced so much opposition from Democrats and Klansmen that he wanted to resign. In fact, after one assault on the streets of Eutaw, he defaulted on a case because he feared for his life.[62] Guilford Coleman, a black man from Eutaw, was a delegate to the state convention which nominated Charles Hays and Governor Smith. Days after Coleman returned from the convention, masked riders abducted him from his house and he was never seen again.[63] Arthur Smith, a white clerk in the town of Eutaw, went to Demopolis to testify against a bailiff for the town. When he returned the bailiff told Smith he would shoot him on sight the next time they ran into each other. At their next meeting, however, the man claimed he had no recollection and believed himself drunk when he made the threat. Smith eventually did resign his position as clerk, becoming tired of the threats and violence within the town of Eutaw.[64] The prominent Democrats in town told a different story of Smith's resignation. According to Jolly, no Democrat made any threats; Smith had simply offended the citizens of Eutaw and then resigned.[65]

Democrats and Republicans almost invariably had a different story for the same event. Democrats rarely saw threats or could name any occurrence in which violence against Republicans or blacks took place. When Democrats acknowledged that an act of violence

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[62] Testimony of William Miller, *KKK, Reports,* Alabama, 8: 5.

[63] Testimony of Charles Hays, *KKK Reports,* Alabama, 8: 13.

[64] Testimony of Arthur Smith, KKK Reports, Alabama, 8: 45, 52.

[65] Testimony of J. J. Jolly, *KKK Reports,* Alabama, 8: 280.

occurred, they generally blamed the victims. According to Democrats, Republicans usually deserved what they received; they had no honor and therefore did not deserve the same rights as honorable white men.[66]

The Ku Klux Klan basically rode unimpeded throughout Greene County from 1868 until the implementation of the Third Enforcement Act of 1871. However, "Military action and the imposition of martial law were probably the most effective means of bringing Klansmen to account."[67] During the military era of Reconstruction, "The primary duties of these officers were 'to protect all persons in their rights of person and property, to suppress insurrection, disorder and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals.'"[68] The Klan theoretically could not pressure a jury or threaten witnesses during military rule. In practice, the Klan faced little opposition even by the military, not because the military turned a blind eye, but because the government could not stop the subterfuge of the Klan. Neighbors still feared for their safety if they testified against the Klan or Democrats known to have Klan ties. The military's task of convincing people that they were safe to testify proved difficult.

In Eutaw, the military had the opportunity to bring Klansmen to justice and set an example for all the townspeople. In the assault of white Methodist minister, Joseph Benjamin Fitzpatrich Hill, it failed dramatically. Hill had moved from South Carolina to Eutaw before the war and promptly joined the Confederate army as a chaplain. After the war, Hill joined the Republican Party, created a school for freedmen, and joined the local Union League. Clearly he

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[66] Wyatt Brown, *Honor and Violence in the Old South*, 31.

[67] Kaczorowski, *Judicial Interpretation*, 64.

[68] William Archibald Dunning, "Military Government During Reconstruction." in *Essays on the Civil War and Reconstruction and Related Topics* (New York: The Macmillan Company, 1904), 143.

had a change of heart regarding the freed people. A resident of the nearby town of Union, Hill visited a store in Eutaw on Saturday, March 14, 1868.[69]

On that day a group of men followed Hill into Alfred Almont's store. One of the men, William Pettigrew Jr., confronted Hill about a debt that he owed to Pettigrew's father. After Hill claimed that he knew nothing of the debt, Pettigrew struck Hill, and the men managed to push him out into the street. Several men assisted Pettigrew in beating Hill while others looked on. At one point Hill managed to escape and run down the street, but the small mob followed. Before the crowd could reach Hill, James Clark, the town chancellor, managed to calm them and let Hill escape. Later a member of the mob, James Steele, visited Hill's home. After Steele left, five more of the group visited Hill and warned him he had three days to leave town. The group "denounced his 'd---d Radicalism' and informed Hill that 'no niggers should ever be educated to vote again in Greene County."[70] Hill promptly left the county.

Hill reported the incident to Freedmen's Bureau agents, who issued warrants and arrested fifteen men in total for the assaults. The arrests caused quite the outrage in the town of Eutaw, because most of the men were respectable citizens of the county: a stagecoach driver, a member of an established Greene County family, a farmer/school teacher, and a shoemaker among them.[71] Shocked citizens could not believe these young men were being held by federal authorities, and they became even more shocked when General George Meade, the head of the Fifth Military District, put the matter in the hands of the military.

Under the Military Reconstruction Act of March 2, 1867, the military effectively took control of the court system. Until Alabama ratified a new constitution, General Meade had the

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[69] Warren Rogers Jr., "Eutaw Prisoners," 101.

[70] Ibid," 101-104.

[71] Ibid,103, 110.

choice whether to let a case go to the circuit court or hold a military tribunal. Alabama would be readmitted to the Union just four months after the Eutaw Prisoner case, but until that time the military held jurisdiction over the proceedings.[72]

The prisoners were charged with riot, assault, battery and lynching. According to the Alabama Code, lynching was "an attack by two or more persons on another for various purposes stated in the statute. One of these reasons involved any attempt to force an individual from an area."[73] At the trial, John Pierce and J.J. Jolly defended the prisoners. The defense claimed that the case was not under military jurisdiction, however, "convinced that the Hill incident was politically motivated, Meade looked to the army for quick and sure justice. If the men were guilty, their conviction would deter others from political crimes."[74] This trial gave the military and the federal government an opportunity to hold the citizens of Alabama responsible for their actions. The military could make an example out of these young men and show Alabamians that violence against blacks or Republicans would not be tolerated no matter what the apparent reason. The military could make a just and unbiased decision with the facts presented, so Klan members had no chance of persuading or intimidating the jury.

During the trial, the prosecution brought several witnesses forward. One witness in particular, Soule Hill, the son of Joseph Hill, swore one of the prisoners "said that father got his abuse on account of his political opinions."[75] The owner of the store, Allmont, as well as James B. Clarke, and a freedman named Ephriam Webb, all testified against the prisoners. After the tribunal took place officers sent transcripts, results, and recommendations to Meade. Several of

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[72] David P. Currie, *The Constitution in the Supreme Court: The First Hundred Years, 1789-1888* (Chicago: University of Chicago Press, 1985), 297.

[73] Warren Rogers Jr., "Eutaw Prisoners," 106.

[74] Ibid, 104.

[75] Ibid, 107.

the accused were sentenced to hard labor in Florida's Dry Tortugas at Fort Jefferson. They began their journey on May 4. While the press espoused the credibility and the characters of the convicted men, the public became outraged at the severity of the punishment. Several politicians, including former Senator Robert Jemison and Congressman Hays, asked for the release of the prisoners. Hays' mercy seems unusual, because he, as a Republican Congressman, was asking for leniency for Democrats who attacked Republicans. Hays justified his views by stating that the punishment of the prisoners upset Greene County and more violence would result.[76] Former Senator Francis S. Lyon, a Democrat, called Meade fair and the best leader of any military district in the South, but he thought Meade oppressed all of Alabama by finding the prisoners guilty.[77]

On May 17, only thirteen days after the prisoners left, Meade announced that he would pardon the prisoners. On June 11, Fort Jefferson released the prisoners and they made their way back to Alabama.[78] In General Orders: Number Eighty, Meade wrote, "Their conviction and punishment having, however, vindicated the principle involved, suffering imposed on the relatives and friends of the prisoners of the promises made of future good conduct, and in the belief that a proper example, earlier made might have deterred the prisoners from committing the offence, has directed the discharge of the prisoners."[79] Meade went on to warn all citizens of the South that "The commanding general takes this occasion to state that similar clemency need not be expected in future, and he warns the people of his District that he is determined to suppress all

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[76] Ibid, 107, 109, 113, 110, 114.

[77] Testimony of Francis S. Lyon, *KKK Reports*, Alabama, 10: 1415, 1410.

[78] Warren Rogers Jr., "Eutaw Prisoners," 116.

[79] George G.Meade, *Major General Meade's Military Operations and Administration of Civil Affairs in the Third Military District and Dep't of the South, for the Year 1868 with Accompanying Documents* (Atlanta: Assistant Adjutant General's Office: Department of the South, 1868), 102.

lawlessness and violence, and all attempts of individuals to take the law into their own hands, or to decide who shall or shall not live in the country."[80]

By releasing the prisoners Meade missed a tremendous opportunity. No one in Greene County faced punishment for the crimes against blacks or Republicans. This trial created an opportunity to show Alabamians the consequences of ignoring the federal laws. Releasing the men demonstrated that public opinion could change leaders' minds. The reversal of this decision helped to empower Democrats and remove what little power Republicans had. Blacks and white Republicans were worse off than before the trial. The prisoners went back to Greene County vindicated for their actions. These prisoners, who were in all probability associated with the Klan, could continue their patrol of violence without consequences, because the military was weak and the state court system was even weaker.

The violence and drama in the town of Eutaw continued throughout Reconstruction. After Military Reconstruction ended and Alabama voted to ratify the Constitution, prosecution of criminal activity returned to the county and state courts. Democrats and Klan members held so much power over the fearful population that state courts were almost powerless. In fact, even when a government official became the victim of a crime little could be done. If blacks were to receive protection, it would have to be in the federal courts of the United States.

The murder of Alexander Boyd, the state solicitor—or prosecutor—for Green County demonstrates both the power of the Ku Klux Klan and the powerlessness of the state courts to bring Klan members to justice.[81] Boyd was detested by whites for his Republican Party affiliation and his choice of roommates: his uncle William Miller who was the county judge, and

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[80] Ibid, 102.

[81] Christopher Waldrep, *Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi* (Athens: University of Georgia, 2010), 143.

a third roommate, who was an agent of the Freedmen's Bureau. These Republican officials faced many threats during their tenure in Eutaw. For example, a man threatened to kill both Miller and Boyd when he encountered them on the street. Fortunately a more cautious man prevented the assault.[82] Violence and threats, however, rarely frightened Boyd and he was determined to do his job and to oversee justice in Greene County.

The situation became more dangerous for Republicans when a white Democrat named Sam Snoddy was murdered in Greene County on December 8, 1869. The murder itself was not political; Snoddy was attacked and allegedly killed for his money. Three suspects emerged all of whom were black: Sam Caldwell who was seen having tea with Snoddy shortly before the murder, Caldwell's father Sam Colvin, and Henry Miller, who reported seeing Caldwell washing blood out of his clothing.[83] John Pierce and J.J. Jolly–the Klansmen who had defended the Eutaw Prisoners three years earlier–defended the three alleged murderers.[84] In all probability the two lawyers provided very little defense. Lawyers with known Klan ties were likely to be more loyal to the Klan than to the law.

After the men were arrested and jailed matters become vaguer. All three men "disappeared," but testimony varies according to the source. It is unclear whether they escaped, were broken out of jail by the Klan, or released by the jailer to the tender mercies of the Klan. Whatever the circumstances, they were safer in jail than out.[85] Within hours of their release, Sam Caldwell disappeared, Henry Miller was found dead, and Sam Colvin was discovered hanging

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[82] Testimony of William Miller, *KKK Reports*, Alabama 8: 2.

[83] Testimony of William Miller, *KKK Reports*, Alabama, 8: 3,6.

[84] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 265.

[85] Testimony of James McKee Gould, *KKK Reports*, Alabama, 10: 1841;Testimony of William Miller, *KKK Reports*, Alabama, 8:3, 6.

from a tree with sixteen bullet holes in him.[86] Witnesses testified to the Congressional Committee that disguised men attacked Colvin, but it was clear that county officials could not or would not solve the crimes.[87]

At this point, state solicitor Alexander Boyd entered the picture. Boyd courageously asked questions and investigated the crimes in an area where it was dangerous just to be affiliated with the Republican Party. Eventually Boyd was satisfied that he knew who killed Colvin. Unfortunately he bragged publicly that he had enough evidence for a conviction, a statement that probably cost him his life.[88]

On March 31, 1870, the Klan rode into Eutaw to take care of Boyd. According to witnesses, about thirty masked riders, armed with guns, ropes, and even military swords, clad in long black gowns—their horses similarly attired—approached the town from two different directions. The two groups converged in the town square, and immediately set out sentinels.[89] While part of the men stood guard, the rest barged into the hotel where Boyd was staying. They forced the clerk upstairs to reveal Boyd's whereabouts. A loud argument ensued and then a fight that ended with gunshots. A few minutes later the disguised men came down the stairs, got on their horses, and the whole group rode out of town.[90] It appeared to witnesses that the masked

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[86] Testimony of William Miller, *KKK Reports*, Alabama, 8: 3.

[87] Testimony of John Pierce, *KKK Reports*, Alabama, 8: 301.

[88] Testimony of Arthur Smith, *KKK Reports*, Alabama, 8: 49; Testimony of John Pierce, KKK Reports, Alabama, 8: 299.

[89] Testimony of John Minnis, *KKK Reports*, Alabama, 8: 528. For an excellent analysis of the Boyd murder, see William Warren Rogers, "The Boyd Incident: Black Belt Violence During Reconstruction," *Civil War History* 21(Dec. 1975): 309-329.

[90] Testimony of Samuel W. Crawford, *KKK Reports*, Alabama, 9: 1215.

riders had intended to hang Boyd, but he fought too vigorously and as a result his murderers shot him on the spot.[91]

Unfortunately the local sheriff lacked the determination that Boyd had demonstrated in investigating the previous Klan victims. Informed of the murder immediately, Sheriff Cole called for a doctor who performed an autopsy that very night.[92] Dr. John S. Meriwether found three shots to the head and four in Boyd's abdomen. Five men signed the death certificate, plus the doctor, and the sheriff who were present, yet no posse formed to search for the parties involved. Witnesses saw the riders head toward Springfield, then return to Eutaw's town square, and then head back toward Springfield.[93] Yet, authorities made no attempt to arrest or detain anyone. The sheriff claimed that he did not have enough men to safely pursue the attackers.[94]

The night riders, on the other hand, made the most of their blood-filled night . About fifteen miles north of Eutaw, masked riders killed James Martin, a black man who was a Union League leader, but had no involvement with the Boyd investigation. Martin's roommate ran from the riders, but later told authorities that the men shot Martin as he fled the house.[95] Conveniently enough, known Klansmen were absent on the night of Boyd's murder, having taken the precaution of establishing an alibi. J.J. Jolly was out of town during both Boyd's murder and the murder of Sam Colvin.[96] When news got out that Boyd was buried the next day, April 1, 1870, numerous townspeople thought the murder was an April Fool's joke rather than a

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[91] Testimony of John Minnis, *KKK Reports*, Alabama, 8: 529.

[92] Ibid. 530.

[93] Testimony of Samuel W. Crawford, *KKK Reports*, Alabama, 9: 1216, 1215.

[94] Testimony of John Minnis, *KKK Reports*, Alabama, 8: 530.

[95] Testimony of William Miller, *KKK Reports*, Alabama, 8: 3. According to Rogers, the two Klan groups were likely different. Rogers, "Boyd Incident," 311.

[96] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 265.

real crime.[97] When they realized there was no fooling involved, fear and shock rippled through the town as people wondered what blacks would do in retaliation for Boyd's murder.

The following week blacks did indeed march on the town of Eutaw, where they intended to take revenge for their defender's murder. They burned a store, but well-meaning citizens persuaded them to leave town before doing any more damage. Days after the riders killed Boyd, his clerk, Arthur Smith, received a letter from the Klan ordering him to leave Eutaw.[98] When William Miller, Boyd's uncle and former roommate, attempted to collect his nephew's belongings from Eutaw, some Democratic friends advised him to stay away. Eutaw was not safe for any of Boyd's family or friends.[99] The Klan had maintained some level of control in Eutaw throughout Reconstruction, but Alexander Boyd was the first government official to fall victim to the Klan. Now all government agents were terrified that neither their official position nor the governments they represented could protect them from the Klan.

Democrats throughout town blamed Boyd for his own murder. Fifteen years earlier, Boyd and a man named Charner Brown got into a fight, and Boyd killed Brown. Convicted for second degree murder, Boyd had served only a year of his ten year sentence when the governor asked for clemency, and the court reduced his sentence.[100] Many townspeople believed that Boyd died in retaliation for Brown's death. Because fifteen years had passed, it seems more likely that Boyd died for his political principles and indiscretion in discussing the current murder investigation. Democrats described Boyd as "overbearing… an incompetent officer; and … a

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[97] Testimony of John Pierce, KKK Reports, Alabama, 8: 300, 298.

[98] Testimony of Arthur Smith, *KKK Reports*, Alabama, 8: 59,63.

[99] Testimony of William Miller, *KKK Reports*, Alabama, 8: 7.

[100] Testimony of Arthur Smith, *KKK Reports*, Alabama, 8: 49; Rogers, "Boyd Incident," 323-24.

very offensive man in every way."[101] Clearly his politics offended white Democrats. Republicans and friends of Boyd retaliated, "he was a man of good character, of fair ability; a reputable man in every way." He "was very vigilant and earnest in his work."[102] Regardless of their political associations, both groups agreed that Boyd had made powerful enemies, both in his killing of Brown years earlier and particularly by announcing his plans to convict Sam Colvin's murderers.

Refusing to admit any knowledge of the Klan, J.J. Jolly—a known Klan leader– told authorities that he believed the group of men got together with no other intention than to kill Boyd[103] For a random group of men put together for one occasion, the nightriders maintained extraordinary discipline. They rode into town in two by two formation, with sentinels, apparent "officers," and guards. Many former Confederate soldiers joined the Klan, which resulted in the Klan having the tactical and organizational character of an army. The Klan had a ranking order; they had officers who they turned to for orders. They knew their mission, and they did their duty. Like the army, the Klan held loyalty in the highest regard. It is not surprising in the least that Jolly, a known Klansman, would not admit the organization's existence.

The governor sent an investigator to investigate the blatant murder of state official, Alexander Boyd. John Minnis, who later became a federal district attorney for Alabama, spent three weeks in Eutaw.[104] The grand jury convened for two weeks before ultimately dismissing the case.[105] Investigators could not identify any of the riders. By tracing the tracks from the night

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[101] Testimony of John Pierce, KKK Reports, Alabama, 8: 298.

[102] Testimony of William Warner, *KKK Reports,* Alabama, 8: 33, 31.

[103] Testimony of J.J. Jolly, *KKK Reports,* Alabama, 8: 266.

[104] Testimony of John Minnis, *KKK Reports,* Alabama, 8: 528.

[105] Testimony of James Clark, *KKK Reports,* Alabama, 8: 259.

of the murder, the jury decided the killers came from outside the county.[106] The murderers "were traced to the Mississippi border line," and some riders were traced to neighboring Pickens County.[107] Because of a lack of identification, the grand jury claimed it had no choice but to dismiss the case. Arthur Smith, brother of Judge Luther Smith who presided over the grand jury, claimed, however, that the jury did not do its due diligence. Arthur Smith testified in front of the jury under the assumption that his testimony would remain private. Days later, Smith's testimony was known all over the county.[108] By law grand jury members were required to keep testimony and facts of court cases private. Jury members in Eutaw either deliberately neglected this duty, or members of the county intimidated the jury into revealing details of the case. It is easy to see why so many people feared testifying in courts. Testimonies were well known, and revenge could easily be enacted by the Klan. Moreover, grand jurors themselves were frequently associated with the Klan.

Simply being associated with the Republican Party made many officials marked men. Samuel Browne, the Republican Tax Assessor for Greene County, was a former Confederate veteran with one leg. Yet Browne faced threats and assaults multiple times in Eutaw. Believing himself a target of the Klan, in addition to Boyd, on the night of the murder, Browne considered himself lucky to have left town at the time.[109] Historian William Warren Rogers writes, "Citing outrages against blacks and intimidation of county officials, Browne denounced crime in Greene and the utter inability of its officers to suppress it… '[p]rotection from the Ku Klux Klan could not be relied on from the court system because Our Grand Juries indict us & protect them from

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[106] Testimony of Arthur Smith, KKK Reports, Alabama, 8: 49.

[107] Eyre Damer, *When The Ku Klux Rode* (Freeport: Books for Libraries Press, 1972), 134; Testimony of Luther Smith, KKK Reports, Alabama, 8: 102.

[108] Testimony of Arthur Smith, *KKK Reports,* Alabama, 8: 45.

[109] Warren Rogers, "The Boyd Incident," 317.

indictment.'"[110] Eutaw's Republican citizens, both black and white, earnestly wanted to find Boyd's killers, but they feared the Klan.[111] One citizen wrote to the governor pleading for help, "In the name of God, have mercy and send some protection. I will suggest, that our county be put under Marshall [sic] law. Do away with these little civil officers, who are afraid, not brave enough to do their duty. As for our sheriff– we might as well be without one."[112]

As a result of the pleading from residents and the assassination of State Prosecutor Boyd, Governor Smith sent troops to Eutaw on April 7, a little over a week after the murder. Ten troops arrived on April 12. Republicans feared that ten men would not be enough to hold the violence of the Klan at bay. On the other hand Democrats thought the small number of soldiers unnecessary because in their eyes they were generally following the laws and only minimal violence occurred.[113]

According to Alabama State Judge Luther Smith, the Boyd case was the first incident that actually obstructed the state court system in Greene County.[114] And yet, "Almost no one of the Klan was ever punished by Southern courts, even under Republican state governments."[115] The Klan acted as they wished. Their motivation was "driven by the fundamental concept that their ends–the restoration of home rule and the establishment of white supremacy– justified their means— coercion, intimidation, even murder."[116] White southerners held closely the belief that by keeping the freedmen in submission and limiting Republican interference, they could protect

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[110] Warren Rogers, "The Boyd Incident," 318.

[111] Testimony of Francis S. Lyon, *KKK Reports,* Alabama, 10: 1421.

[112] Warren Rogers, "The Boyd Incident," 317

[113] Ibid., 321.

[114] Testimony of Luther Smith, *KKK Reports,* Alabama, 8: 101.

[115] Fitzgerald, *Splendid Failure*, 66.

[116] Warren Rogers, "The Boyd Incident," 318.

southern society. To white southerners the former slaves and the Republicans who assisted them were barely worthy to be considered human let alone the victims of crimes. In Klansmen's eyes they were simply cutting down the tree that blocked the road.

This pattern developed throughout Reconstruction. Because the state courts could not– or would not– convict perpetrators of racial crimes, the newly formed Justice Department eventually had so many cases involving the Enforcement Act that many Klansmen never made it to trial and hundreds of violators slipped through the cracks. Throughout the South, Northern Republicans continued to battle Southern Democrats and Klansmen to bring violators to justice. With the end of Reconstruction in 1877, the United States reversed much of the progress made by the Republicans and the South reverted to a close reflection of its antebellum way of life.

During Reconstruction, however, Eutaw faced many difficulties. The majority of citizens feared the Klan. White Democrats tied to the Klan maintained dominance over the small town even with blacks outnumbering whites in Greene County. The few white Republicans who resided in Eutaw could not help the main body of free blacks. When they did attempt to provide help, they faced the threat of violence or the noose. Eutaw became a prime example of the worst possible outcome of Reconstruction. The federal government could not maintain control of the Black Belt counties, and Greene County in particular had a ferocious amount of Klan activity considering the small numbers of white Democrats who resided in the county.

The military failed the town of Eutaw when General Meade pardoned men who blatantly attacked a white Republican just because of his political affiliations. This failure provided the Klan with more power. By giving even more power and control to Democrats the military emboldened them. With this new power Democrats and Klansmen took it upon themselves to attack Alexander Boyd, who was not only a white Republican but also a state official. The Klan

believed that the laws did not apply to them and as a result Klan members faced no consequences and had no fear while riding in Eutaw.

The beginning of Reconstruction formed Eutaw into a hotbed of political activity, rife with tensions. A perfect mix of political turmoil and Klan violence formed a catalyst for fear. That fear and hatred between Republicans, both white and black, and Democrats continually festered. It only took two political meetings for the tension to spill over into racial upheaval and violence. Eutaw was on the brink of a catastrophe.

Chapter 2 - "Men or Measures"

During Reconstruction the United States government enacted several new federal laws to protect citizens of the South. Government officials still struggled, however, with prosecuting offenders under these new laws. They faced the challenge of finding law breakers, having enough evidence to bring them to trial, and having an unbiased jury look at the facts and apply the law justly. On top of these hurdles the federal courts needed cases that would bring national attention to the issues, ones that could potentially make their way to the Supreme Court and establish precedence for all following court cases. Events in Eutaw progressively escalated during Reconstruction. In October of 1870, just before the election, Eutaw once again erupted in violence, presenting an opportunity for the local federal courts to rule on the new legislation.

After Eutaw distinguished itself as a town dominated by the violence of the Ku Klux Klan, the state government took notice. With the upcoming 1870 election, however, the situation paralyzed the state, specifically the Republican governor William Smith. Any action taken by the Alabama state government risked angering a large population of voters. Black Republicans and white Democrats were at opposite ends of a political spectrum, and no elected official could gain the support of both parties. Elected governor in 1868, Smith refused to form militias to aid the Black Belt counties because he did not want to turn white voters against the new state government.[1] A southerner by birth, Smith was opposed to slavery and secession yet stayed in Alabama during the war, fleeing behind Union lines in 1862. After the war's end he was nominated by Governor Lewis E. Parsons as judge to the tenth circuit court. Six months after his nomination, Smith resigned to help organize the Republican Party in Alabama. He was elected

[1] Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (Baton Rouge: Louisiana State University Press, 1971), 246,88.

Governor in 1868, becoming the first Republican governor in Alabama's history.[2] Smith feared that taking any action against the Klan would exacerbate political unrest and violence. However, it was very unlikely that any Democrat would switch to the Republican Party, regardless of what the governor did, or did not do. Smith could not count on the black vote either, because his lack of action thus far displeased the freedmen. According to historian John Sloan, "Smith could not hope to get the support of the Negroes, for his record had clearly alienated them. The Radical office holders throughout North Alabama had lost faith in him when they had pleaded time and time again for help in overcoming the Klan, only to find Smith adamantly against any militia and not overly anxious to use federal troops in the area."[3]

It took the murder of Alexander Boyd in 1870 to prod Smith into action. The pleading letters of citizens and the Klan's blatant disregard for the law could not be overlooked. Smith requested federal troops be sent to Greene County and stationed near the town of Eutaw. General Samuel Crawford supervised the ten soldiers, stationed in the county. In Crawford's opinion Greene County desperately needed the troops' presence.[4] In fact Crawford believed that Eutaw in particular needed troops because of the Klan's presence and control throughout the entire town. Democrats still controlled the town of Eutaw, even though more blacks resided there than whites. The former slaves were still subjected to white rule; the traditions of the South had not changed with the implementation of the Reconstruction legislation. The town government and control of

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[2] Fitzgerald, Michael, "William Hugh Smith," in *Alabama Governors: A Political History of the State*. Ed. Samuel L. Webb and Margaret E. Armbrester (Tuscaloosa: University of Alabama Press, 2014) 103-106.

[3] John Z. Sloan, "The Ku Klux Klan and the Alabama Election of 1872," *The Alabama Review: A Quarterly Journal of Alabama History* 18 (January 1965): 118.

[4] Testimony of Samuel W. Crawford, United States Congress, *Report of the Joint Select Committee to inquire into the Condition of Affairs in the Late Insurrectionary States*, 13 vols. (Washington, D.C.: U.S. Government Printing Office, 1872) (hereafter cited as KKK Reports), Alabama 9: 1173.

the town never changed hands despite the large black majority, and blacks never had a participating faction in the leadership. Eutaw needed federal supervision just to maintain order. Crawford told the Congressional Committee later that "he made an earnest recommendation that troops should be sent to the town of Eutaw, and permanently kept there."[5]

No one quite knew what the new situation would hold. Would the federal troops' presence be a permanent fixture or remain only until they restored order? If troops just stayed until Klan activity died down, what would stop the Klan's resurgence as soon as the troops left? In June 1870 Republican Congressman Charles Hays wrote to General Crawford to request that troops remain in Alabama until after the November election. Hays believed the political climate leading up to the election would be dangerous for Republicans.[6] In addition, Hays believed Democrats hated him and created a dangerous environment for him personally. The closer to an election the more the Democrats fought to control the black vote. Democrats in the area thought differently. The Klan leader and prominent lawyer J. J. Jolly, for example, believed Greene County did not need federal troops and that Eutaw had "the ability to enforce the law and protect life, liberty, and property in [their] own courts and under [their] own laws."[7] But by their "own courts" and "own laws" Jolly meant the Klan's courts and the Klan's laws. Both Hays and Jolly became unofficial spokesmen for their respective parties.

By October 1870 the political tensions in the area boiled over. With an election imminent, nominees traveled the country side to political meetings drumming up support for their respective parties. A delegation had nominated Charles Hays for Congress once again and he traveled across his district giving speeches. Eutaw created a problem for Hays, however.

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[5] Testimony of Samuel Crawford, *KKK Reports*, Alabama 9: 1177.

[6] Ibid, 1173.

[7] Testimony of J. J. Jolly, *KKK Reports*, Alabama 8: 284.

Democrats in the area disliked him so much he felt unsafe at any political rally. He believed his life would be endangered if he spoke alone in Eutaw and as a result he asked fellow Republicans Governor Smith, Senator William Warner, and the former Governor Lewis Parsons a recent Republican convert, to speak with him on October 21.[8] His fellow Republicans agreed and posters advertising the rally with the three men went up on October 12. It is unclear why Hays did not hold the meeting at his plantation as he had done previously. Perhaps he thought a meeting in town would draw more attention than a purely Republican meeting held at Hays Mount.

The so-called "Eutaw Riot" broke out when Democrats planned a political rally in Eutaw for the same date. Posters advertising a Democratic rally went up all over Eutaw on the same day as Republican posters. [9] Senator Warner saw the Democratic posters advertising various speakers from the state senate. Warner recognized, however, that these Democrats were committed to speak elsewhere in the state on that particular date.[10] The Democrats responsible for organizing the meeting told differing stories; some claimed they had no idea that the Republican rally was set for October 21. Others claimed they thought it best to hold their meeting at the same time as the Republican meeting to keep the Democrats away from the Republican rally and hopefully keep the violence at bay.[11] However, it is difficult to believe that Democrats hoped to avoid conflict with the Republicans when they deliberately scheduled a meeting for the same place and time. Because most political meetings involved alcohol, moreover, it was unlikely that drunken

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[8] Testimony of Charles Hays, *KKK Reports*, Alabama, 8:16; Woolfolk Wiggins, Sarah, "Lewis E. Parsons, June- December 1865," in *Alabama Governors: A Political History of the State*. Ed. Samuel L. Webb and Margaret E. Armbrester (Tuscaloosa: University of Alabama Press, 2014) 91-94.

[9] Testimony of Arthur Smith, *KKK Reports*, Alabama, 8: 44.

[10] Testimony of William Warner, *KKK Reports*, Alabama, 8: 26.

[11] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 271.

white Democrats would avoid black Republicans. Democrats were also forced to admit that they advertised speakers on their fliers before they checked the speaker's availability. Not one man advertised on the Democrats' poster actually spoke at the rally.[12] In all likelihood the Democrats scheduled the rally and expected either violence against the black Republicans or, at the very least, an opportunity to intimidate the black voters immediately before the upcoming election.

Both the Democratic and Republican rallies met on October 21 at Eutaw's courthouse. This same courthouse had been burned two years earlier by John Hunnicutt, the same man who worked closely with J.J. Jolly to organize the Klan in neighboring Hale County. After the fire "the people of Greene County rebuilt their courthouse on the same foundation, using the same elevation and plan of the original courthouse, but building with brick instead of wood."[13] Both Republicans and Democrats commonly used the courthouse for political meetings in Eutaw, however, these party meetings usually took place on different days and different times. This time they would meet simultaneously on opposite sides of the courthouse. Democrats and Republicans rarely mixed in heated debates where violence did not ensue. Republican leaders worried about the concurrently scheduled meeting when they approached the courthouse on October 21. Republicans requested to meet with General Crawford and the sheriff before the rally began. They discussed the option of bringing the troops stationed outside of Eutaw into town to maintain order.[14] With most Democrats against the troops' presence in general, the Republicans feared a violent altercation if soldiers came into town. Thus Crawford stationed the

[12] Ibid.

[13] Mrs. Cecil R. Glass, "Early Days of Eutaw," *The Alabama Review: A Quarterly Journal of Alabama History* 18 (January 1965): 56.

[14] Testimony of William Warner, *KKK Reports*, Alabama, 8: 27.

men half a mile outside of town and Republicans thought if something went wrong the army could get to the courthouse in time.[15]

Trying to alleviate some tension, Hays suggested that the two political parties combine meetings and have a debate, a strange request in light of ongoing political violence. County Judge William Miller composed a note to send to the Democratic leaders asking if they would consider debating the Republicans. The note read, "To The President of the Democratic Club: We propose to appoint a committee of two to confer with a committee on your part of two, to arrange terms of discussion today."[16] According to the leaders of the Democratic Party, J.J. Jolly, William Morgan, and John Pierce, Democrats received only a verbal invitation to debate from the Republicans. The Democrats, in turn, requested that the invitation be in writing and they claimed they did not receive the written letter before beginning their own meeting.[17] The Republicans received a note from Jolly and Pierce, declining a debate "believing that the issues as to men or measures in that canvass were not debatable."[18] The Democrats in Eutaw believed that the Republicans, white Republicans especially, were traitors to their race who did not deserve a debate. The parties were so divided that a debate would serve no purpose.

Still worried about the potential for violence, the Republican leaders met with the sheriff who told Warner he would clear the courthouse so the Republicans could meet at the steps. Later, the plan for having the meeting on the courthouse steps had to be altered, and the group put a table outside the circuit clerk's office window. The clerk locked his door with the intention of blocking any trouble from the inside; if violence broke out it would be from only one

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[15] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 14.

[16] Testimony of William Miller, *KKK Reports*, Alabama, 8: 4.

[17] "The First Blood," *Mobile Daily Register*, October 29, 1870.

[18] Testimony of William Miller, *KKK Reports*, Alabama, 8: 4.

direction.[19] Hays told the former governor, Lewis Parsons, that he had a derringer in his pocket if any difficulties did arise.[20]

At this point the narrative of events becomes conflicting. The Republicans and Democrats– not surprisingly–told differing stories of the events that followed the beginning of the Republican meeting. Republicans testified to the Congressional Investigating Committee that almost immediately after they began their meeting, Democrats adjourned and crossed the yard to join the Republicans. According to Republican witnesses, the Democrats became hostile immediately.[21] Republicans and Democrats alike recognized many Eutaw citizens in both the parties' meetings, but they also saw several faces from neighboring areas in the crowd. Many men from Mississippi attended the rally, as did known Klansmen from across the state.[22] Ryland Randolph, the editor of the Tuscaloosa *Independent Monitor,* who had helped form a Klan in Tuscaloosa County, unsurprisingly, attended the meeting in Eutaw.[23] With a meeting so close to the election, Eutaw drew many interested parties.

Republican William Warner had spoken in Eutaw on several previous occasions. Two years ago Democrats had refused to let him speak because he originated from the North. While Democrats hated Charles Hays, who was a southerner by birth, Warner was a Carpetbagger. The only thing Southern Democrats hated more than a Carpetbag Republican was a local white Scalawag Republican.[24] When Warner got up to speak that day in Eutaw, Republican witnesses

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[19] Testimony of William Warner, *KKK Reports,* Alabama, 8: 27.

[20] Testimony of Lewis Parsons, *KKK Reports,* Alabama, 8: 81.

[21] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 14.

[22] Ibid, 15.

[23] Trelease, *White Terror*, 84; William Warren Rogers Jr., *Black Belt Scalawag* (Athens: The University of Georgia Press, 1993), 40.

[24] Testimony of William Warner, *KKK Reports*, Alabama, 8: 30.

claimed the Democrats in the audience continually yelled phrases such as "damned liar," and "[d]amned carpet-bagger."[25] These insults, along with many other rude and distracting comments, upset Warner so much that he eventually cut his speech short. Warner had spoken across the entire State of Alabama, and nowhere else had Democrats or Republicans interrupted, insulted, and threatened him personally like the audience members did in Eutaw.[26]

When former Governor Parsons took the stand to speak, he recognized several of the Democrats in the audience who had been in Livingston, Alabama, at a rally the day before.[27] As a former prominent Democrat who had converted to the Republican Party in 1869, Parsons would have recognized many Democrats.[28] Although no violence had taken place in Livingston, the appearance of Democrats aroused Parsons' suspicion. During the former Governor's speech the county clerk of Greene County, Arthur Smith, saw a Democrat named Robert Hamblett threaten the governor: "Let me kill the God-damned old son of a bitch."[29] Hamblett pulled out a derringer but his comrades held him back saying, "Don't shoot yet, it's not time."[30] Smith testified that deputy Sheriff, Hugh L. White, came into Smith's office during former Governor Parson's speech and told him, "Smith, you will see the damnedest row here in a little while that you ever saw in your life." [31] Smith's testimony suggests that the Democrats came to the Republican meeting *already planning* to make trouble. While Republicans spoke, the Democrats ventured closer to the table that served as a podium. One Democrat climbed up on the table and

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[25] Testimony of William Miller, *KKK Reports*, Alabama 8: 5.

[26] Testimony of William Warner, *KKK Reports*, Alabama 8: 28.

[27] Testimony of Lewis Parsons, *KKK Reports*, Alabama, 8: 81.

[28] Woolfolk Wiggins, "Lewis E. Parsons," 93.

[29] Testimony of Arthur Smith, *KKK Reports*, Alabama, 8: 45.

[30] Ibid.

[31] Ibid, 44.

sat on the window ledge behind the speaker. Eventually the man climbed into the office of the courthouse.[32] At this point Democrats completely surrounded the white Republicans.

Recognizing that the situation was becoming dangerous, Hays decided to forgo his speech and adjourn the meeting. He feared for his own safety as well as for that of other Republicans.[33] Democrats yelled and called for him to take the stand, but as soon as he began to speak one man pulled Hays to the ground while others tilted the table over.[34] The sheriff intervened and took that offender into the courthouse as several Democrats followed. According to Republicans, after Hays fell to the ground Democrats fired into the crowd of blacks from the windows, doors, and around the corners of the courthouse.[35] Smith, the clerk, heard a man yell, "Go in, boys; now is your time."[36] Smith could not see who yelled the command but he believed that John J. Jolly delivered the orders to the Democrats.[37] At this point chaos broke out across both groups.

Senator Warner approached a contingent of Democrats and pleaded with them to stop, but one of these men pointed a gun toward Warner and former Governor Parsons. The man with the gun intended to fire until he saw Charles Hays. He then changed targets and aimed the derringer at Hays. He fired at Hays and missed, but the sheriff stopped the man before he could fire again at the Congressman.[38] As more Democrats began to join in the disarray, the blacks

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[32] Testimony of William Warner, *KKK Reports*, Alabama, 8: 28.

[33] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 14.

[34] Ibid.

[35] Testimony of William Warner, *KKK Reports*, Alabama, 8: 28.

[36] Testimony of Arthur Smith, *KKK Reports*, Alabama, 8: 45.

[37] Ibid.

[38] Testimony of William Warner, *KKK Reports*, Alabama, 8: 28.

fled.[39] They tore down the gate around the courthouse and ran down the street. As they ran Warner heard a voice from the Democrats shout, "Boys, hold your fire!"[40] Some Democrats attempted to stop the violence, while many others pursued the blacks down the street. By this time the federal troops had been notified and they approached the courthouse. The troops blocked the whites' attempts at pursuing the blacks.[41] With the timely intervention of the federal troops the riot ended.

As the riot came to a close someone knocked Senator Warner's cap off. The Democrats kicked the hat back and forth like a schoolyard game, while Warner tried to get it back. A Democrat approached Warner and politely told him he was not safe and for his best interest he should forget the hat and leave the area. Later Warner saw the man at a restaurant and thanked him again for his advice. The man accepted the thanks and again suggested Warner leave the area. The riot had ended, but Republicans were still in danger.[42] Similarly another witness, William Miller, had his hat knocked off his head during the riot. Miller told friends he believed John Reynolds purposely knocked his hat off. A month after the riot Reynolds assaulted Miller on the street with a walking stick and told him, "God damn you, if you ever tell of this I will kill you."[43]

Many of the Republicans and Democrats at the meeting turned riot knew each other well. The Eutaw Riot was not a covert act of the Klan where all members were masked. These Democrats and Republicans were neighbors and citizens of the same community. Even the few men from Mississippi and Livingston who traveled to assist the Greene County Democrats in

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[39] Testimony Charles Hays, *KKK Reports*, Alabama, 8: 15.

[40] Testimony of William Warner, *KKK Reports*, Alabama, 8: 29.

[41] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 15.

[42] Testimony of William Warner, *KKK Reports*, Alabama, 8: 29.

[43] Testimony of William Miller, *KKK Reports*, Alabama, 8: 4-5

breaking up the meeting, were not complete strangers to the town's residents. While former Governor Parsons rode the train back to Talladega after the riot, he heard men talking to each other. They claimed, "we have cleaned out the damned radicals, and are going home."[44] Another man returning from a trip to neighboring Hale County met men leaving Greene County. They told him they had "been over there and made the radicals jump once, and would again if they had a meeting."[45] Democrats, especially those who maintained a brotherhood in a secret society, made a habit of assisting members from around the area.

Democrats told their own version of events at the riot. Every accusation Republican witnesses made against the Democrats, the Democrats deflected or denied. According to Democratic witnesses no one heckled or harassed the Republican speakers. John Pierce, a leading Democrat, claimed he asked former Governor Parsons informed and intelligent questions− not to harass the governor but to spur on a good, calm debate.[46] J.J. Jolly corroborated Pierce's story; the Democrats never harassed the Republicans. Democrats innocently wanted a fair debate and if Republicans were so weak that tough questions irritated them the Democrats could not be blamed. According to Jolly, at one point the sheriff asked if Jolly would patrol for trouble. As a result Jolly took a few men who had been drinking into the courthouse to avoid any violence outside.[47] From Jolly's perspective, he protected the Republicans and tried to make the meeting a safe and good natured debate.

Democrats even claimed that Republicans were not fond of their own speakers. Historian Walter Fleming, a member of the *Dunning School* wrote, "One man who was to speak, Charles

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[44] Testimony of Lewis Parsons, *KKK Reports,* Alabama, 8: 83.

[45] Testimony of Arthur Smith, *KKK Reports,* Alabama, 8: 45.

[46] Testimony of John Pierce, *KKK Reports,* Alabama, 8: 302.

[47] Testimony of J.J. Jolly, *KKK Reports,* Alabama, 8: 268.

Hays, was so obnoxious to the whites that even the Radicals were unwilling for him to speak."[48] Democrats assumed that because they hated Hays, no honorable man could support him. In fact Hays became a topic of heated debate. Republicans insisted Democrats pulled Hays off the table and fired shots, while many Democrats accused Hays of firing the first shot. William Warner later said this accusation was "ridiculous," because if Hays had fired the first shot or ordered the blacks to fire Warner would have heard the command.[49] According to Jolly's account of the incident, a black Democrat wanted to take the stand with Hays. The man pulled Hays down and after Hays fell all of the Republican blacks rushed forward to start a riot.[50] This story is curious because in a town dominated by the Ku Klux Klan it is unusual to have any black members of the Democratic Party. Jolly went on to claim that John Reynolds, the same man who would later assault Judge William Miller in Eutaw, attempted to help this unknown black Democrat up onto the stand.[51]

The *Mobile Daily Register*, a notoriously Democratic newspaper, reported, "As soon as [Hays] fell, he ordered the negroes, in a loud and peremptory voice, to fire on the whites, repeating the order or command several times."[52] The *Eutaw Whig and Observer* also reported that Hays fell and then ordered his supporters to fire.[53] It is relevant to point out that Democrats ran both papers. The *Mobile Daily Register,* edited by John Forsyth, became an influential paper for the South. Forsyth, an avid Democrat, had hoped his paper could "control the votes of the ex-

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[48] Walter L. Fleming, Civil War and Reconstruction in Alabama (New York: Columbia University Press, 1905), 686.

[49] Testimony of William Warner, *KKK Reports*, Alabama, 8: 36, 39.

[50] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 268.

[51] Ibid, 270.

[52] "The First Blood," *Mobile Daily Register*, October 29, 1870.

[53] Rogers Jr., *Black Belt Scalawag*, 76.

slaves but when this proved futile, Forsyth's bitter racial animosity burst out unchecked."[54] Forsyth's paper constantly defended the South and Democrats alike. No newspaper account could be read without a distinct political bias. Thus "Forsyth's steadfast, single-minded but multifaceted defense of the South made his *Mobile Daily Register* Alabama's most important organ for urging Southern resistance to Radical rule and the perceived threat of racial upheaval."[55]

Before the riot the *Register* had a circulation of five thousand for the daily paper and twenty thousand for the weekly. This made it the second largest paper in the South, behind only the *Louisville Courier Journal*.[56] This paper is important in understanding southerners' views during Reconstruction, as historian Carl Osthaus wrote, "The *Register* never viewed the freedmen as responsible agents of Reconstruction but, rather, considered them dupes of Northern Radicals." Thus "A steady diet of such rhetorical abuse reinforced Southern prejudices and helped deny to the Republicans any recognition as loyal, respectable opponents who could be trusted with the reins of government."[57] It is important to realize that such biased papers with such large circulations, would influence the public and consequently the potential jury if a trial were to take place.

Eventually the debate regarding the Eutaw Riot boiled down to one question: who shot first? By pointing to Charles Hays, Democrats could demonstrate not only that disorderly blacks followed the orders of a Scalawag, but also that Democrats were there to maintain peace and order. Democrats insisted that blacks should submit to Democratic rule for the blacks' own

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[54] Carl Osthaus, *Partisans of the Southern Press: Editorial Spokesmen of the Nineteenth Century* (Lexington: The University Press of Kentucky, 1994), 126.

[55] Ibid, 131.

[56] Ibid, 143.

[57] Ibid, 126, 125.

good− not surprisingly the same argument used to justify slavery. As historian Eyre Damer points out, "The pistol shot which followed so quickly the rude interruption of Hays' remarks was not the real cause of the riot; it was the signal for the opening of a conflict which had been impending for some time, and it gave vent to indignation which had been suppressed with difficulty."[58] Despite Democratic excuses, it stands to reason that the Democrats were responsible for the riot. It is difficult to believe that a sitting Congressman would fire into a crowd mixed with his black supporters and Democrats. It makes more sense to conclude that Democrats who admittedly hated Hays would blame the start of the violence on him.

After the shooting began Democrats claimed that Republicans shot John Pierce, a lawyer in Eutaw and a leader of the Democratic Party. In fact, Pierce later found a bullet hole in his pants' leg.[59] The shot went "just about the thigh, about four inches from the crotch; it entered the back part and went through."[60] Pierce believed a black man near the entrance of the courthouse shot at him.[61] Democratic gubernatorial candidate Robert Lindsay also reported Pierce had been shot by blacks, because all the whites fired into the air.[62] According to both J.J. Jolly and Pierce, blacks had planned for the violence because they were all armed and shooting at the Democrats.[63] In retaliation "the whites began firing, principally into the air."[64] Claiming that whites all fired upwards, Pierce stated, "I thought it was all fun; I had no idea anybody was

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[58] Eyre Damer, *When The Ku Klux Rode* (Freeport: Books for Libraries Press, 1972), 144.

[59] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 268

[60] Testimony of John Pierce, *KKK Reports*, Alabama, 8: 302.

[61] Testimony of J.J. Jolly, *KKK Reports*, Alabama 8: 268.

[62] At the time of the riot Robert Lindsey was the Democratic candidate for the Governorship. He was elected Governor in the November, 1870 election and at the time of his testimony to Congress was the present Governor of the State of Alabama; Testimony of Robert Lindsay, *KKK Reports*, Alabama, 8: 221.

[63] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 284.

[64] Fleming, *Civil War and Reconstruction In Alabama*, 687.

shooting at anybody. I got on the table, and laughed extravagantly at the way the negroes were flying and running about; they broke down the court-house palings jumping over."[65] The *Mobile Daily Register* reported that the blacks fled but then rallied, coming back to face the whites. According to the paper federal troops came into town, but whites assured them they were not needed and the troops moved on.[66] There are no military reports that corroborate this part of the story.

Even after the riot, reports continued to differ. Republicans generally reported more blacks injured or killed by the violence, while Democrats reported fewer injuries and deaths. Charles Hays saw two injured black men lying on the grounds of the courthouse whom he was convinced would die.[67] The *Mobile Daily Register* claimed two white men suffered wounds and many whites narrowly escaped death, as they had multiple bullet holes in their clothes. The *Register* also reported that twenty-five or thirty blacks sustained wounds with two dead.[68] This report is not corroborated by any of the leading Republicans or Democrats. Jolly believed that two white men suffered injuries along with perhaps twenty blacks, and according to him no blacks died.[69] Another Democrat at the riot, James Clark, later testified that no more than four blacks were wounded, while none died.[70] Newly elected Democratic Governor Lindsay claimed that only two blacks were injured and other black Republicans actually injured them.[71] Historians

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[65] Testimony of John Pierce, KKK Reports, Alabama, 8: 317, 302.

[66] "The First Blood," *Mobile Daily Register*, October 29, 1870.

[67] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 15.

[68] "The First Blood," *Mobile Daily Register*, October 29, 1870.

[69] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 271.

[70] Testimony of James Clark, *KKK Reports*, Alabama, 8: 261.

[71] Testimony of Robert Lindsay, *KKK Reports*, Alabama, 8: 221.

generally report the Eutaw Riot killed four black Republicans and wounded between twenty-four and fifty-four more.[72] Witness' accounts vary too much to give a reliable number of injured.

In what appeared to be a benevolent act by a Democrat, John Pierce claimed he offered to pay the medical bills for a black man with a broken thigh whom Pierce passed on his way home.[73] This account seems suspect because Pierce was the only person, Democrat or Republican, to note this selfless act. Pierce also told of his apparent selflessness when another Democrat filed a complaint against the black man who had supposedly shot at Pierce during the riot. When authorities asked Pierce to testify, he refused, because he wanted the whole matter over with. Moreover, he claimed, he could not accurately identify the black man because they all appeared too similar.[74]

The Eutaw Riot dwindled to a close, but the effects were far reaching. The Riot's timing was critical. It was only a couple of weeks before the November 1870 elections. Two weeks allowed Democrats the perfect amount of time to use the riot to their advantage. Blacks feared the repercussions of their votes, because the riot and the violence were not far removed. The Eutaw events also ended many of the Republicans' campaigns. Two weeks did not give Republican leaders enough time to build back the confidence of their black supporters. The riot itself "was no small incident for a former governor and a sitting governor, Congressman, and U.S. senator to be mobbed. The Eutaw Riot, the most spectacular extension of violence directed at Fourth District Republicans, marked the end of the 1870 campaign for Hays." [75] The *Mobile Daily Register* advised blacks to "Strengthen the power of the party that would save you and

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[72] Foner, *Reconstruction*, 427.; Trelease, *White Terror*, 272.; Damer, *When the Ku Klux Rode*, 144. Rogers Jr., *Black Belt Scalawag*, 76.

[73] Testimony of John Pierce, *KKK Reports*, Alabama, 8: 305.

[74] Ibid., 307.

[75] Rogers Jr., *Black Belt Scalawag*, Alabama, 8: 77.

your children from untold evils. No matter what you have thought before, vote this time the only way that an honest and virtuous citizen can vote and an approving conscience will say 'right' to you for the rest of your life."[76] Effectively the riot did exactly what Democrats had intended it to do; it frightened Republicans away from the polls and gave Democrats the 1870 election.[77]

The election itself became as controversial as the riot. Republicans insisted the polls had been tampered with, while Democrats saw no proof. After the election Senator Warner maintained that the counts had been falsified, and that the violence and fear instilled by the Democrats kept blacks from voting.[78] One reason for Republicans' suspicions appeared to be that all poll keepers in the election were Democrats appointed by the Democratic sheriff and the Republican Probate judge.[79] Republicans insisted that an election run purely by Democrats with no Republican supervision needed to be investigated further. The numbers in the election also became suspect. In the 1868 election Republican Hays had won by a majority of 2,600 votes, roughly the same number of freedmen living in the county, while Democrats only earned 800 votes. In Greene County a total of around 3,400 ballots were cast. Two years later in the 1870 election, with the same number of ballots cast, the Democrats took the election with a majority of forty-three votes.[80] The 1870 election had the same number of ballots cast as the 1868 election, but the votes switched from a Republican majority to a Democratic majority− yet very few blacks even voted.[81] The problem did not lie with black Republicans switching parties but with

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[76] "Save Your State," *Mobile Daily Register*, November 8, 1870.

[77] Melinda Meek Hennessy, "Political Terrorism in the Black Belt: The Eutaw Riot," *The Alabama Review: A Quarterly Journal of Alabama History* 33 (January 1980): 48.

[78] Testimony of William Warner, *KKK Reports*, Alabama, 8: 32.

[79] Testimony of Arthur Smith, *KKK Reports*, Alabama, 8: 60.

[80] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 18.

[81] Ibid.

their just not voting. If they did not go to the polls− where did the Democratic votes come from? Democratic fraud seemed clear to Republicans.

When asked, Democrats insisted that their party legitimately lost votes in the 1870 election because of the Eutaw Riot. They believed that the black Republicans would have voted the Democratic ticket, but because of the violence the freedmen did not vote. [82] Robert Lindsay, who was elected Governor in the election, claimed that Democrats would have had 500 more votes had it not been for the violence in Eutaw. Lindsay also believed that Charles Hays had become so hated that he drove black voters to the Democratic ticket.[83] Another Democrat discussed the election saying, "I can tell you why it fell off in several cases. Major Hays was known in Alabama as a most cruel master that ever lived in that country before and during the war; and it is common reputation that he gave orders to the negroes for their services upon men who never paid them."[84] Jolly agreed, testifying that the freedmen did not like Hays because Hays did not pay them.[85] Yet, Hays had a large following of black supporters before the election, and the violence at Eutaw was not between Hays and blacks. The Democratic argument that Hays alienated his supporters seems unlikely.

Historians have been divided over the topic of the 1870 election in Alabama. John Sloan wrote, in 1965, "Two things are certain in the disputed election of 1870. The Ku Klux Klan activities cannot be accredited with an intimidation of voters, as more votes were cast then than in the election of 1868. Nor can the Klan and /or the Democrats be blamed for fraud."[86] Yet, historian Eric Foner wrote in 1988, "The Alabama returns revealed that Democrats could not

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[82] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 296.

[83] Testimony of Robert Lindsay, *KKK Reports*, Alabama, 8:183.

[84] Testimony of James Clanton, *KKK Reports*, Alabama, 8: 239.

[85] Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 280.

[86] Sloan, "The Ku Klux Klan and the Alabama Election of 1872." 120.

have carried the state in a peaceful election, for the decline in the Republican vote in Greene County alone (scene of the Eutaw riot and numerous other acts of terror), exceeded Governor Lindsay's entire statewide majority."[87] The evidence seems to prove Foner correct. It is overly optimistic to believe Democrats would not tamper with the election they so desperately wanted to win. The numbers are too coincidental to be accurate. Based solely on the population of Alabama, especially the Black Belt and Greene County, Republicans had a clear majority. Election fraud clearly won the day for the Democrats.

It is safe to deduce that the riot at Eutaw was premeditated by the Democrats. It provided a key opportunity to assert Democratic power in Eutaw and Greene County. Democrats knew the importance of the 1870 election and prepared for victory by force, intimidation, and deception. Republicans once again fell victim to the strong arm of the Democrats. However, as with the murder of Alexander Boyd, the violence caught the attention of government officials. Instead of the state government looking for justice, the federal government took notice of the small Alabama town. Eutaw created an opportunity for the federal government to prosecute on a larger scale under the newly enacted First Enforcement Act. The key evidence seemed to be there for a swift and just trial, but as with many other trials in the South justice was not forthcoming.

After the riot neither Greene County nor the State of Alabama arrested any white offenders. With conflicting evidence provided by both sides and the fact that only blacks were wounded in the riot, the state did arrest Henry Hamlet an African American Democrat accused of firing the first shot.[88] Hamlet may have been the black Democrat whom Reynolds assisted up onto the podium. However, it is interesting to note that although Democrats identified Hamlet as

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[87] Foner, Reconstruction, 442.

[88] Testimony of William Miller, *KKK Reports*, Alabama, 8: 10; *Mobile Daily Register*, "The First Blood," October 29, 1870.

a Democrat, he never identified himself with the party. The state never pursued any white Democrats involved in the violence. Two months after the riot, in December 1870, one of the unknown Democratic participants beat a Republican newspaperman. County clerk Arthur Smith testified to the Congressional Investigating Committee that a man whom he could not name attacked the Republican newspaperman. Smith identified the individual as one of the Democratic rioters. Neither the state nor the newspaperman filed charges for the assault.[89] Republicans in Greene County, however, began to feel that Democrats stood above the law; there would be no justice in town for fear of the Ku Klux Klan and its retribution.[90] When the Congressional Committee asked Judge William Miller if he believed that "prominent men engaged in business will not take a stand for the purpose of bringing these people to punishment," [91] Miller replied, "I say exactly that."[92] When asked, "what chance is there for the State Courts to suppress this violence, if no indictments are found," Republican Arthur Smith replied, "No chance; I look upon the State Courts as a farce, so far as that is concerned… I think I can speak very confidently of the circuit court of Greene County, that it is utterly powerless to convict these men, or any parties guilty of these crimes."[93] In Greene County all county officials were white Democrats except for the Republican probate judge, Luther Smith.[94] Even a Democratic state solicitor was appointed after the murder of Boyd.[95] With so many Democrats in positions of power, selecting

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[89] Testimony of Arthur Smith, *KKK Reports,* Alabama, 8: 47.

[90] Testimony of William Miller, *KKK Reports,* Alabama, 8: 9.

[91] Ibid.

[92] Ibid.

[93] Testimony of Arthur Smith, *KKK Reports,* Alabama, 8: 58.

[94] Testimony of Luther Smith, *KKK Reports,* Alabama, 8: 101; Testimony of William Miller, *KKK Reports,* Alabama, 8: 10.

[95] Testimony of John A. Minnis, *KKK Reports,* Alabama, 8: 528.

an impartial jury and promising safety to witnesses who testified proved to be an impossible task for the state courts.[96]

Democrats denied these allegations. They claimed that Republicans were not upstanding citizens and people in the area could not trust the Republican government officials. One Democrat told the Congressional Committee, "Our judges have been unknown to the people, and some of them have incurred the prejudices of the people, and where that is the case it is not as easy a matter to administer the laws as where they have confidence in the judge, and respect for his character and standing."[97] Democrats attempted to discredit not only Republicans but any laws which Democrats viewed as the result of Republican actions. Democrats refused to acknowledge the credibility of the new Enforcement Act by arguing that it was unconstitutional. The Constitution did not give the federal government the express powers given in the Enforcement Acts and thus the Act was unconstitutional.[98] The Democrats' simpler argument became that because the Constitution did not directly state that the federal government had the right to arrest and convict citizens under the Enforcement Act, the Act itself was unconstitutional. *The Mobile Daily Register* published the Enforcement Act in its entirety [99] and the next day another article called it an "act to destroy the last lingering traditions of State Rights, to constitute a civil and military Dictatorship, and for other purposes."[100]

The government originally intended the Enforcement Act to be, as the title suggests, a way to enforce the newly ratified amendments to the United States Constitution. Yet because of

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[96] Testimony of Arthur Smith, *KKK Reports,* Alabama, 8: 58.

[97] Testimony of Francis S. Lyon, *KKK Reports,* Alabama, 10: 1423.

[98] Robert J. Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights, 1866-1876* (New York: Fordham University Press, 2005), 61.

[99] "The Ku-Klux Law," *Mobile Daily Register,* April 27, 1871.

[100] " Ku- Klux Bill," *Mobile Daily Register,* April 28, 1871.

Democrats' refusal to cooperate at the local level, the federal government became responsible for justice on a mass scale.[101] This proved to be a difficult task. The sheer number of crimes and the limited personnel and financial resources hampered the Justice Department in prosecuting the crimes. The number of individuals to be prosecuted and the large space in which they operated simply overwhelmed the federal government officials available to do the job.[102]

The federal government was working in untried territory. Prosecution was difficult. Many citizens assisted suspects by hiding them, helping them resist arrest, or helping them run from the law.[103] Across the South many citizens took up collections for the defense of Klansmen in federal court.[104] The federal government had to clear numerous hurdles when prosecuting individuals under the Enforcement Act. To make sure that cases could be prosecuted, it was essential that district attorneys frame indictments that would stand up in court.

Republican Sam Brown, a witness, provided the testimony on which Republicans framed the indictments of the Democrats on federal charges.[105] Circuit Judge William B. Woods took down Brown's account personally.[106] Woods, a native Ohioan, practiced law and originally voted the Democratic ticket in the Ohio legislature. During the Civil War he joined the Army and impressed both Generals Grant and Sherman. After the war Grant appointed Woods to the Fifth Circuit Court, where he then heard Sam Brown's version of events at the Eutaw Riot.[107] The

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[101] Kaczorowski, *Judicial Interpretation*, 61, 72, 86.

[102] Ibid, 86.

[103] Ibid, 61, 72, 86.

[104] Ibid, 47.

[105] Testimony of John Pierce, *KKK Reports*, Alabama, 8: 317.

[106] Christopher Waldrep, *Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi* (Athens: University of Georgia, 2010), 138.

[107] Timothy L. Hall, "William B. Woods," *A Biographical Dictionary* (New York: Facts on File, Inc, 2001), 179.

government filed the charges on October 29, 1870, just eight days after the riot. The documents charged several Democrats in the cases, including William C. Hall, under whose name the case would be filed; J.J. Jolly, the leader of both the Democrats and the Klan in Greene County; Jo Reynolds, accused of encouraging Democrats during the rally and assault afterwards; Hugh L. White, a deputy sheriff; and William Pettigrew, formerly a Eutaw Prisoner sent to the Dry Tortugas.[108] The government indicted all defendants under the 1870 Enforcement Act.

Responsibility for framing the indictments was assumed by John P. Southworth, recently appointed by Ulysses S. Grant, on April 20, 1869, as District Attorney for the Southern District of Alabama.[109] Southworth a thirty-six year old native of Illinois also held the position of District Attorney for the Northern District of Alabama at the time of the riot.[110] He resigned his position to focus on the Southern District in December, 1870. When framing the indictments Southworth used a broad interpretation of the U.S. Constitution, assuming that the "privileges and immunities" of the United States citizens were the same rights listed in the Bill of Rights including free speech and freedom of assembly**.** As historian Charles Lane writes, "In prosecuting the case, *United States v. Hall*, the U.S. attorney in Alabama, John P. Southworth, became one of the first Justice Department officials to attempt a practical definition of the rights protected by the Enforcement Act… In two separate counts, Southworth's indictment charged the Klansmen with conspiring to violate two of the Republicans' First Amendment rights:

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[108] Charges in case #62, #79 #78, #83, Record Group 21, National Archives, East Point, GA.

[109] *Journal of the Executive Proceedings of the Senate of the United States of America: From March 5, 1899 to March 3, 1871 Inclusive* (Washington DC: Washington Government Printing Office, 1901), 221.

[110] Samuel Webber, *A Genealogy of the Southworths (Southards) Descendants of Constant Southworth* (Boston: The Fort Hill Press, 1905), 453; Testimony of Samuel A. Hale, *KKK Reports*, Alabama, 10: 1821; *Journal of the Executive Proceedings*, 221, 287, 554.

freedom of speech and freedom of assembly."[111] The indictment also assumed that the new Fourteenth Amendment authorized the federal government to protect those rights when the states failed to do so.

The indictments accused the men of four separate crimes. First that the defendants "did unlawfully and feloniously band and conspire together with intent to injure, oppress, threaten and intimidate Willard Warner, Charles Hays, Lewis E. Parsons and Samuel B. Browne… with intent to prevent and hinder their free exercise and enjoyment of the right of freedom of speech, it being a right and privilege granted and secured to them by the Constitution of the United States of America."[112] The second charge against the defendants read similarly but only accused the defendants of preventing Charles Hays from speaking.[113] The third charge against the defendants claimed that they "did unlawfully and feloniously band and conspire together with intent to injure, oppress, threaten and intimidate…good and lawful citizens of the United States of America with intent to prevent and hinder their free exercise and enjoyment of the right and privilege to peaceably assemble, it being a right and privilege granted and secured to them by the Constitution of the United States of America."[114] The fourth and final charge against the defendants read thus: "[the defendants] did unlawfully and feloniously band and conspire together with intent to injure, oppress, threaten and intimidate…good and lawful citizens of the United States of America with intent to prevent and hinder their free exercise and enjoyment of

[111] Charles Lane, The Day Freedom Died; The Colfax Massacre, The Supreme Court, and the Betrayal of Reconstruction (New York: Henry Holt and Company, 2008), 114.

[112] Charges in case # 62, *U.S. v. Robert Hamlett*, 2, Record Group 21, National Archives, East Point, GA.

[113] Ibid, 3.

[114] Ibid, 4.

the right of suffrage, it being a right granted and secured to them by the Constitution of the United States of America."[115]

Before any trial could proceed, the county grand jury had to hear evidence and return true bills on the individuals. Yet, it proved difficult for the county to even assemble a grand jury. The process of selecting jury members seemed simple as one clerk described it, "The probate judge, the clerk of the court, and the sheriff meet on the first Monday in January… select from the registered list of voters the names of those who are competent to serve as jurors." Then twenty days before the trial names are drawn from a box to select the specific jury members. Several jurors did not appear at the trial. Many jurors explained that no one notified them of their duty and it appeared that two were threatened if they served on the jury, though details are unknown as to who threatened the jurors. [116] During the hearing the grand jury called four witnesses to testify in Mobile, Alabama. The jury summoned Greene County clerk Arthur Smith, and although Smith did not want to testify for fear of his testimony becoming public knowledge, the court assured Smith of the privacy of his remarks.[117] However, not three days after he spoke to the jury the citizens of Greene County knew of his testimony and Smith once again began to fear for his safety.[118] Unfortunately the court did not offer any protection for the witnesses.

Two witnesses to the riot, William Cockrell and William Cockrell Jr., testified against the defendants before the grand jury in Mobile. On a steamboat back to Greene County, the Cockrells were unable to get off at Eutaw due to flooding, thus they went three miles up the river

[115] Ibid, 6.

[116] Testimony of Arthur Smith, *KKK Reports,* Alabama, 8: 52, 53.

[117] Ibid, 45.

[118] Ibid.

to Finch's Ferry and stayed the night.[119] Meanwhile, several men got on the boat looking for Judge Luthur Smith, who was to hold court in Eutaw the next day. While on the boat they found the elder William Cockrell and proceeded to beat him. William Cockrell Jr. identified one of his father's assailants as Jo Reynolds, one of the defendants in the hearing.[120] The assailants gave no indication as to why they beat Cockrell Sr., but it can be surmised it was because of Cockrell's testimony earlier that same day. The local newspaper, *The Eutaw Whig*, claimed that the beating of Cockrell was in no way associated with his testimony, but based purely on his lack of character.[121] These character flaws most likely were his Republican ties. It cannot be viewed as coincidental that the violence against Cockrell took place on the same day as his testimony, and that one of the defendants in the trial was an assailant. Cockrell's beating was based solely on his testimony, a signal that breaking ranks among whites would not be tolerated. Attorney General Southworth hurriedly ordered the younger Cockrell out of the state to protect him from any other assault. The District Attorney needed his testimony.[122]

The grand jury's fourth witness, Republican Congressman Charles Hays, refused to testify. When called Hays clearly recognized the dangers associated with testifying to a grand jury, as demonstrated in a letter to William Warner discussing the assault of William Cockrell. The letter asked Warner not to use Hays' name for fear of being associated with the riot and the trial even more.[123] Oddly, when the Congressional Committee questioned Hays he did not admit

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[119] Testimony of William Cockrell, *KKK Reports*, Alabama, 8: 42- 43.

[120] Ibid, 42.

[121] Testimony of William Warner, *KKK Reports*, Alabama, 8: 40; Testimony of J.J. Jolly, *KKK Reports*, Alabama, 8: 272.

[122] Testimony of William Warner, *KKK Reports*, Alabama, 8: 40.

[123] Ibid, 41.

to anxiety over his safety, perhaps due to fear of retribution.[124] Fear of Klan retaliation was valid and understandable even years after an event. Many Republican leaders, including Willard Warner and county clerk Arthur Smith, believed that Hays feared the repercussions of his testimony.[125] Smith stated, "I do not know what reason [Hays] gave here. I know that Major Hays told me that he was not only told, but written to, that in case he did go there and testify, it would jeopardize his family and himself."[126] Hays knew the Democrats in the county despised him, and if he testified against them he would be not only despised, but also a marked man.[127] Hays declined to answer any of the grand jury's questions and asked Circuit Court Judge Luther Smith to excuse him from the hearing.[128] According to Hays, there were other witnesses to give testimony, so his presence was not required.[129] Hays, moreover, disagreed with prosecuting the Democratic rioters because a trial would affect the voter turnout.[130] He told the Congressional Committee that "it would be far preferable for [the] section of the State not to have this testimony published at this time… If the testimony should be published… it would be necessary to send troops there; and [citizens] want to get along if [they] can possibly do so."[131] Hays naively argued that if there was no trial and no one complained about the state of affairs in Alabama, the military would leave and Eutaw would be left in peace. [132]

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[124] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 19.

[125] Testimony of Willard Warner, *KKK Reports*, Alabama, 8: 40.

[126] Testimony of Arthur Smith, *KKK Reports*, Alabama, 8: 61.

[127] Ibid.

[128] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 19.

[129] William Warren Rogers Jr., *Black Belt Scalawag* (Athens: The University of Georgia Press, 1993), 82.

[130] Testimony of Charles Hays, *KKK Reports*, Alabama, 8: 21.

[131] Ibid, 13.

[132] Ibid, 21.

The government held the defendants in custody, however, and the case began to garner attention throughout Alabama. White citizens held a fair to raise funds for the defense of the men on trial.[133] The *Mobile Daily Register* reported, "At a concert given for the purpose by the ladies of Eutaw, $80 was raised for the benefit of the young gentleman of that town now on trial at Mobile."[134] Also, the Queen Sisters, a popular singing group, gave a concert to benefit the men on trial.[135] Democrats adamantly campaigned to have the defendants released. Several Democratic leaders went to County Judge William Miller, requesting that he talk to the District Attorney and have all the charges dropped.[136] Miller was the same judge who had been assaulted by Democrats and whose nephew, Alexander Boyd, had been murdered by the Klan just a year earlier. Miller later told the Congressional Committee that justice would never be served because witnesses refused to come forward.[137] Charles Hays agreed, telling the Committee that if the government did convict rioters then the witnesses would not be able to "live in the country."[138] It appeared that an unwritten rule allowed citizens to testify in a general manner but when the courts wanted a citizen to point specifically at an offender, or in a case where an individual might be convicted, the townspeople feared for their safety.

The federal Judiciary Act of 1869 organized the circuit court system by creating nine independent circuit court judges; one judge was assigned to each of the nine circuits. One major requirement was that each judge must be a resident of the circuits for which he rode. These circuit judges effectively had the same duties within the circuit as the U.S. Supreme Court judge

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[133] Testimony of Lewis P. Parsons, *KKK Reports*, Alabama, 8: 83.

[134] "Southern News," *Mobile Daily Register*, May 6, 1871.

[135] Testimony of James Clark, *KKK Reports,* Alabama, 8: 263.

[136] Testimony of William Miller, *KKK Reports,* Alabama, 8: 8.

[137] Ibid, 40.

[138] Testimony of Charles Hays, *KKK Reports,* Alabama, 8: 21.

who was also assigned to that circuit. Though the Supreme Court justices were still required to sit on the circuit court, most cases were heard jointly by the district judge and the new circuit judge. Lou Falkner Williams writes that "Republican lawmakers hoped that this two-headed court with one judge from outside the immediate area would enhance the national interest by decreasing the favoritism toward parochial interests which was often displayed in the district courts."[139] This two headed system created an interesting dynamic because of the possibility of having a disagreement of opinion. If an instance occurred in which the two judges divided on a verdict or point of law, the case could be sent up to the Supreme Court on a division of opinion. This gave judges an opportunity to strategically send cases up through the ranks of the court system and attorneys an alternative to the appeals process.[140] The more important federal cases were generally held in the circuit court rather than district court.

The grand jury decided to send *U.S. v. Hall* to the circuit court and the trial commenced on April 24, 1871 with Circuit Judge William B. Woods and District Judge Richard Busteed sitting jointly on the bench. A week after the court opened, on May 1, Judge Woods sustained one demurrer, claiming the court had no grounds to try the defendants, and overruled others.[141] The absence of Hays' testimony hampered the prosecution and the District Attorney. Southworth had testimony from many Democrats claiming that Hays fired first. Hays became a necessary witness for the prosecution who attempted to prove that Hays had not fired the first shots. Federal attorney Southworth also wanted to show that the Democrats on trial had conspired against the Republicans and initiated the gunfire.[142] Without Hays the prosecution was not yet

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[139] Williams, *The Ku Klux Klan Trials*, Alabama, 8: 50.

[140] Ibid., 61.

[141] "U.S. Circuit Court," *Mobile Daily Register*, May 3, 1871.

[142] Testimony of William Warner, *KKK Reports*, Alabama, 8: 37.

prepared to try the case. Busteed later told the Congressional Committee, "… Those cases were adjourned upon motion of the Government for the term. The Government was not ready to try them when we held circuit court last at Mobile… At the insistence of the defendants, but upon the necessities of the Government; the Government was not ready to try them, and the court was of the opinion that the defendants ought not to be longer held; that they were entitled to either postponement or a trial."[143] In the court documentation District Attorney Southworth wrote, "Charles Hays is an important and material witness for the Government…without whose testimony the United States could not safely go to trial on a former day of this tenure of court and the said cause was therefore continued until the next term of this court on account of the absence of the said witness Charles Hays."[144] The prosecution had every intention of subpoenaing Hays and the court postponed the trial until the following term commenced.

The Eutaw Riot began simply as a violent attack against Republicans. However with the federal government's attempts to bring the Democrats to justice, the events, the trial, and the enforcement efforts took on a larger role. The trial presented the opportunity to interpret the Fourteenth Amendment for the first time. The court hoped not only to bring the Klan to justice but, more importantly, make the legal connections between the Bill of Rights, the privileges and immunities of American citizenship, the Reconstruction Amendments, and the Enforcement Act. These important implications are the reason that District Attorney Southworth and Judge William B. Woods actively sought to continue the trial until the next term and achieve a guilty verdict against the defendants.

[143] Testimony of Richard Busteed, *KKK Reports*, Alabama, 8: 324,327.

[144] Failure to Show, May 25, 1871, Case 62, *U.S. v Robert Hamlett*.

Chapter 3 - "Vain and Idle Enactment"

The Civil War not only split the nation, but it split the small town of Eutaw, Alabama. With the expansion of the Republican Party within the small town, the tensions between Republicans and Democrats finally boiled over in October 1870. The riot started a two year battle in the nation's courts to define the meaning of the Fourteenth Amendment and the legality of the 1870 Enforcement Act. Democrats and Republicans told differing stories of the events and because of the scope of the violence, it fell to the United States government to find out who committed a crime. The town of Eutaw again can be viewed as a microcosm of the larger struggles of southern Reconstruction. The town faced backlash after the war, then suffered violently at the hands of Klansmen; now the town struggled in the courts to breathe meaning into the new Fourteenth Amendment and the Enforcement Acts. With every step the federal government took on a large scale, Eutaw, Alabama reacted on a smaller scale. Studying the reactions of the citizens of Eutaw provides insight into the reaction of the South to Reconstruction and Reconstruction's ultimate failure.

Citizens of the town were not the only actors in the story of Reconstruction; the courts played a major role. The reaction of the federal courts to the Eutaw riot, the testimony, and the resulting jury decision affected not only the defendants but also the very laws under which the government brought them to trial. The government was attempting to establish a broad interpretation of the Fourteenth Amendment and the 1870 Enforcement Act. To legitimize the Reconstruction Acts judges needed to uphold the indictments framed under the new law. To bring justice to the Republicans, a jury needed

to find the defendants guilty of a *federal violation*, an outcome the government believed to be clearly evident.

The trial of the rioters had been postponed into the next term of the Fifth Circuit Court in January 1872, because key witnesses failed to testify, specifically Charles Hays. Whereas two judges sat jointly in the previous session (April 1871) Judge Woods held this next term (January 1872) of the court alone. Without District Judge Busteed there could be no division of opinion between the judges, so the only way *U.S. v Hall* could go to the Supreme Court now was a conviction and an appeal. John P. Southworth remained as District Attorney and the defendants had several lawyers, including John Pierce, who had witnessed the riot.[1] The citizens of the town had not forgotten about the trial, either. If anything, interest in the case had increased in the eight months since the trial's postponement. In fact, on January 6, 1872, the day the trial began, a man entered the court room and demanded that District Attorney Southworth come outside. The man, recorded only as Watson, angrily confronted Southworth. The district attorney, who was preparing to begin the important case, refused to leave the courtroom, and the man left with no other incident.[2]

The defendants faced the same four charges as before. Again, the first charge was that the accused men banded and conspired together either to stop or intimidate the Republican speakers on the day of the riot. The prosecution delivered the second charge

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[1] "The Courts," *Mobile Daily Register*, January 6, 1872; Testimony of John Pierce, United States Congress, *Report of the Joint Select Committee to inquire into the Condition of Affairs in the Late Insurrectionary States,* 13 vols. (Washington, D.C.: U.S. Government Printing Office, 1872) (hereafter cited as KKK Reports),Alabama 8: 317.

[2] January 6, 1872, Case #62, *US. v. Robert Hamlett*. Record Group 21, National Archives, East Point, GA.

against the men, again, for conspiring together to intimidate and deprive Charles Hays specifically of his right to freedom of speech. The third charge filed against the men accused them of banding together to hamper citizens, specifically Republican citizens, from their right to peaceably assemble. The fourth and final indictment charged that they intended to prevent citizens, again specifically Republicans, from executing their right of suffrage.[3] Southworth wanted to arraign the men immediately, but the court gave the defendants a day to discuss the indictments.

Southworth meticulously framed the indictments. Because both the Fourteenth Amendment and the Enforcement Act were so new, no precedent had been set for gaining convictions under them. Because the obvious crimes committed, riot, assault, and murder, were not considered federal crimes the district attorney faced the difficult job of crafting the indictments to charge a federal offense. The federal crime would be one of conspiracy and banding together to prevent the Republicans from exercising their rights. Regardless of the violence that occurred, the key element *was the conspiracy to create* that violence to impede civil rights. In the indictments Southworth assumed that the Fourteenth Amendment incorporated the Bill of Rights and made the Amendment applicable to the States. Under this assumption, if the states did not protect blacks' rights the federal government could intervene. Ultimately the attorney general's indictments were experiments in what would stand up in court.

When the defendants returned to court they hoped to quash the indictments, but Judge Woods allowed the first three counts to stand as they were. The Judge took a day to

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[3] Indictment of Men, December 5, 1871, Case #62, *U.S. v. Robert Hamlett.* Record Group 21, National Archives, East Point, GA.

review the fourth count.[4] When court resumed the next day, Woods quashed the fourth count, which said that the men "intimidated certain persons named from exercising the right of suffrage."[5] Ultimately Woods did not see the direct connection between the riot and preventing citizens from their right to vote. Had the riot occurred on Election Day the connection might have been more evident. As the events stood, Woods must have considered the link arbitrary. When the charges had been agreed upon by both the defense and the prosecution the names of the men were read, and the defense noted that Southworth failed to put the names of some of the men on all three indictments. The defense attorney wanted to consolidate all indictments and allow a *nolle prosequi* (to drop the charges), arguing that the men Southworth did not list on all three indictments should be released. Judge Woods denied this request, leaving a total of twenty-one men indicted.[6] John J. Jolly, Robert Hamlett, James McBrown, Edward Meredith, William Perkins, F.H. Mundy, John Perkins, Beverly Pierce, and Joseph Eliott appeared in the court. John Hall Jr., William Pettigrew, Joseph Reynolds, George Bizzle, William Widerford, Hugh L. White, Elisha Estis, Charles Spencer, William Harper, William C. Hall, Thomas Cowan, and Edwin Reese Jr. did not appear, nor had they been arrested.[7]

After much stalling, the court selected a trial jury made up of eight white men and four African Americans.[8] This jury was a major development. Previously blacks could not even testify against a white person, let alone sit on a jury. These four black jurors

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[4] "The Courts," *Mobile Daily Register*, January 6, 1872.

[5] "The Courts," *Mobile Daily Register*, January 7, 1872.

[6] Ibid; Bryan A. Garner *ed*., *Black's Law Dictionary, 9th Edition* (Ann Arbor: Thomson Reuters, 2009), 47.

[7] "Important Trial," *Semi-Weekly Louisianian*, March 28, 1872.

[8] "The Courts," *Mobile Daily Register*, January 9, 1872.

risked the angry retribution of white southerners. Once the jury was selected, the court was ready to begin. No opening remarks were recorded and the court moved right to witness testimony. The prosecution first called former Governor Parsons and then Charles Hays to the stand as witnesses; both men had spoken at the Republican rally on the day of the riot. Both witnesses told the jury they heard shots from the courthouse windows behind them and that the windows were about six feet off the ground. Neither witness specifically identified any of the defendants as parties to the violence.[9]

The next witness, white Republican Greene County clerk Arthur Smith, reported that on October 1, 1870, Republican fliers went up around Eutaw advertising the political rally. Democratic fliers did not go up until October 13. Smith also testified that on the day of the riot he locked his office door but he opened his window to give General Warner water, at which point Edwin Meredith, one of the defendants, climbed into his office and unlocked the door to let other Democrats into the room.[10] In contrast with Governor Parsons and Charles Hays, Smith identified Alvin Spencer, William Pettigrew, Joseph Reynolds, and Edwin Meredith as men who yelled at William Warner during his speech.[11] Smith believed there were a total of about 200 shots fired during the riot. He also testified that afterwards he saw J.J. Jolly and several of the defendants with guns.[12] According to Smith, after the initial gunshots Republican representative candidate Sam Brown, who later reported the crime to Judge Woods, hid in Smith's office. John Hall Jr.

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[9] Ibid.

[10] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 10, 1872.

[11] Ibid.

[12] Ibid.

found him and aimed a gun at Brown while calling to other Democrats. Someone yelled to Hall, "John, don't, for God's sake, shoot a man in cold blood!"[13]

William Cockrell, a sixteen year old white lad, whose father had been beaten over testifying earlier to the grand jury, also testified. The prosecution whisked young Cockrell out of the state immediately after his father had been beaten because he was such a key witness.[14] It took an inordinate amount of courage for this young man to testify when his own father had been beaten by these very same men for doing the same thing. He claimed that he saw a Democrat, Ed Meredith, fire the first shot. He also stated that Joseph Elliott, Robert Hamlett, William Harper, Thomas Cowan, Beverly Pierce, W.E. Hall and Ed Reese Jr. fired shots. He also saw the sheriff's deputy Hugh L. White fire at a black man who then fell. In retrospect the boy remembered seeing only one black man with a gun earlier that morning, but none during the riot.[15]

Witness George Crenshaw, a black Republican, initially heard Jolly speak at the Democratic Rally, but Crenshaw left when the Republican rally began. As he walked away, he heard Jolly say, "Go along you…it's going to rain on your side of the house."[16] Crenshaw, unlike any of the other witnesses, Republican or Democrat, could name five of the injured black men: Clint Hays, James Hays, White Hays, and Tony Thompson, and a man only identified as Lee.[17] It is worth noting that the three men with the surname Hays

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[13] Ibid.

[14] J.P. Southworth to Department of Justice, May 29, 1871, Department of Justice, Source Chronological Files for Alabama, "Letters Received by the Attorney General, 1871-1884: Southern Law and Order." Reel 6-7, Microfilm.

[15] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 10, 1872.

[16] Ibid.

[17] Ibid.

were, in all likelihood, former slaves of Charles Hays. It was common for freedmen to have the last names of their former masters, and as Hays was one of the largest landholders in the county, it was possible these men were his former property. It is important to acknowledge that Hays never did name any men he knew who were injured, when probably he knew at least a few of his former slaves and current laborers who were hurt.

The defense put a number of Democrats on the stand once the prosecution rested. Several witnesses told the jury that J.J. Jolly had, in fact, tried to calm the Democrats during the Republican speeches by shouting, "Give him a hearing boys, he's making a very nice Democratic Speech."[18] Samuel Cockrell, another witness for the defense who had no known relation to William Cockrell, the prosecution's witness, claimed that he saw defendants and earlier participants, Meredith, Hamlett, Jolly, and Pettigrew, in the Clerk's office during the loudest and most violent part of the riot. He also claimed that while the blacks did initially flee after the riot, they came back armed.[19] Democrat S.M. Kirkesy testified that as far as he understood, the Republican meeting was to be held at the train depot about a half mile south of the courthouse. He also told the jury that he saw six to eight armed black men that morning. Kirkesy also explained that Jolly did everything in his power to stop any violence, including going to the grocery stores and asking them to close. This would prevent the sale of alcohol, which he understood would make the rally even more dangerous. Kirkesy also named a few prominent Democrats he saw over on the Republican side of the courthouse, with John Hunnicutt among them.[20]

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[18] Ibid.

[19] Ibid.

[20] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 11, 1872.

Hunnicutt had helped to establish the Klan in the area a few years earlier. Kirkesy also pointed a finger at Judge William Miller, the Republican judge who had been beaten and whose nephew Alexander Boyd had been brutally murdered, claiming that as Kirkesy was leaving the rally Miller told him, "the devil would be to play presently, and he was going to leave." [21] When the prosecution cross-examined Kirkesy, they asked if these men had a good reason to be armed in town. The defense objected, trying to explain that a store had been burned and that being armed was a precautionary measure. The prosecution explained that it did not matter why the men would calculate an event simply that they did.[22] The key element in a conspiracy was that these defendants colluded and premeditated an act of violence; their motives were irrelevant. The charges were ultimately against conspiracy, not the violent outcome of that conspiracy.

The next several witnesses for the defense told roughly the same story, with small details changed. L.G. Cockrell claimed that Hays ordered the first gunshots by shouting "fire;" he was certain J.J. Jolly did not shout the command. He heard someone yell "boys, we must protect him," as soon as Hays fell off the stand. Israel D. Smith claimed that the Democrats directed their gunfire in the air because foliage fell off the trees.[23] Some shots may have gone into the trees, and certainly leaves would have fallen, yet the riot occurred in late October. In all likelihood the trees were shedding their leaves anyway, and falling leaves cannot be used as proof of bullet trajectories. S.W. Dunlap testified that he saw defendant Robert Hamlett drunk, so he took him to Jolly and Morgan's office before the

[21] Ibid.

[22] Ibid.

[23] Ibid.

firing even began.[24] Enoch Morgan corroborated this story.[25] According to this testimony, Hamlett could not have been guilty. Two witnesses admitted that Jo Reynolds fired on a black man, but that he stood too far away to have hit the man. The witnesses for the defense also explained that during the Republicans' speeches there was not only negative "hooting" but also "cheering" as well. It was not a hostile environment, he claimed, but a lively discussion.[26] Other witnesses focused on the number of blacks in town that day. Several witnesses claimed they rarely saw blacks armed, yet they observed 150-200 armed blacks the morning before the riot. Two witnesses identified a black man, Henry Hamlet, as the man who fired the first shots.[27] In defense of Robert Hamlett who allegedly threatened former Governor Parsons, Joseph G. Williford explained to the jury that Hamlett did not threaten Parsons, he threatened Williford. Williford testified that Hamlett threatened to shoot him over a "personal matter" but the words were not directed at Parsons.[28]

While the witnesses' testimony may have seemed mundane, it was important for the jury to be able to understand the broader picture of events. Did the Democrats purposely start the riot, or was it just an unfortunate accident? Were there tensions between Democrats and Republicans in Eutaw? These are things that proved specifically relevant when prosecuting defendants under the Enforcement Acts. The prosecution attempted to show the nature of the riot itself. Because the crimes of assault, riot and murder were not federal crimes, the prosecution had to demonstrate that the defendants

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[24] Ibid.

[25] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 12, 1872.

[26] Ibid.

[27] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 13, 1872.

[28] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 11, 1872.

conspired together to infringe on the freedmen's federal rights. That conspiracy was the federal crime.

In total, the court called thirty-six witnesses. These included ten witnesses for the prosecution (including Charles Hays, who had refused to testify earlier) and twenty for the defense. The other six were not designated.[29] Judge Woods excluded any testimony on the "private conference" held by the Democratic council before the riot, which put the defense at a loss. The defense took time to explain to the jury the difference between an admission of guilt and *res-gestae*. *Res-gestae,* when applied to the witnesses, was in essence the witness repeating words from another individual who might, or might not have been admitting guilt, similar to hearsay.[30] The defense hoped to discredit the prosecution's witnesses. The defense called Arthur Smith, "an adventurer, not belonging to a class of men identified with the community, but standing in the position of a hostile witness, having no true identity with [this part of] the country."[31] They claimed he lied at least eight times in his testimony.[32] They also explained to the jury that they could not assume that "every man who sees [a crime] and does not prevent it is a banded conspirator…"[33] The defense cast doubt on the prosecution by asking why there were so few witnesses. Where were the freedmen? Y.E. Heendon, the defense attorney, asked the jury, "Where are the dead? Where are the wounded coming to testify?"[34] Heendon also

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[29] *U.S. v Robert Hamlett*, January 11, 1872, Case #62, Record Group 21, National Archives, East Point, GA.

[30] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 11, 1872.

[31] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 10, 1872.

[32] "Trial of the Eutaw Prisoners," *Mobile Daily Register*, January 16, 1872.

[33] Ibid.

[34] Ibid.

poked holes in Parsons', Hays' and Cockrell's testimonies by pointing out they did not name a single defendant by name. In fact, witnesses for the prosecution in general rarely named any man by name.[35] The lack of African American witnesses and the absence of specific names in the prosecution's testimony most likely point to a fear of the defendants. Retribution for the testimony had already befallen William Cockrell, Arthur Smith, and Charles Hays earlier in the case.

The defense attorney argued that the district attorney and the court brought suspicion on every action of the defendants: "even the sun rising in the east that morning was a matter of suspicion."[36] From there Heendon turned back to the freedmen as well as the Carpetbaggers and Scalawags who supposedly controlled them. The defense told the jury, "…these poor colored people were deluded into… coming for the purpose of intimidating the Democratic meeting."[37] This argument might be the most inane that the defense made. African Americans naturally supported the party that freed them, and they would not have to be deluded to attend Republican meetings. Moreover African Americans were too intelligent to attempt to intimidate a Democratic meeting full of town leaders and, almost certainly, Klan leaders. Freedmen might act out violently, as they did after the Klan murdered Alexander Boyd, but not with such certain repercussions as breaking up a Democratic meeting.

In his closing arguments, district attorney Southworth recognized that the trial had political repercussions, but regardless of the political stance of the defendants he still

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[35] Ibid.

[36] Ibid.

[37] Ibid.

needed to *prove them guilty* of a crime under the Enforcement Act.[38] Southworth explained to the jury that if he had all the names of the men on the Democratic Council who called the meeting, he would have indicted every one of them.[39] Southworth claimed that "it was morally a crime to call the democratic meeting at all, as the result could be anticipated (and the council, it will be seen, did anticipate it) from the condition of the public mind; and he has a right to suppose that the men who managed it were the men who called it."[40] Southworth explained to the jury that the defense's attempt to pinpoint who fired the first shot became a moot point entirely. As Southworth explained, "Judge Miller knew nothing of the firing, but he had testified to the 'attempt to hinder the exercise of the right of speech;' after that it is unnecessary to show who fired—the offence was complete before Maj. Hays was touched, and it was unnecessary that the meeting should be broken up."[41] The *Mobile Daily Register*, the notoriously Democratic newspaper, cut short the District Attorney's statement claiming the paper did not have room for the entire speech.[42] This statement may be true, but the paper had devoted an entire issue to the trial. It is probable that the Democratic paper simply did not agree with the District Attorney and therefore refused to print his statement as an act of defiance.

Once both sides rested, Judge Woods addressed the jury. He began his instructions by saying, "This gentlemen, has been called a political prosecution. I think this is a mistake. The offense charged is not a political offense, as that term is generally and properly understood. This is simply a prosecution against the accused for an alleged

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[38] Ibid.

[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] Ibid.

violation of the constitutional rights of private citizens, and whether the cause is a political one or not, it is governed by the same rules of law, and your sworn duty is the same as in other cases." [43] He explained to the jury that they had a duty to consider the crimes of each individual man separately.[44] The guilt of one man did not prove the guilt of the others. He also explained that a key component of the trial was to determine if the defendants banded and conspired together to "hinder and prevent [the speakers] free exercise and enjoyment of the right of freedom of speech" and to peaceably assemble.[45]

Woods argued that the prosecution must also show that two or more of the men conspired together; the conspiracy must involve at least two individuals. As Woods explained,

> Though the common design is the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed in terms to have that design and to pursue it by common means. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part, and another part of the same, so as to complete it with a view to the attainment of the same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object.[46]

Woods probably did not allow testimony of what occurred during the meeting of the Democratic Council, because, in essence, it did not matter if a conspiracy had been planned in an official manner beforehand. The conspiracy itself could be a spontaneous event with no planning. What mattered was that a conspiracy did exist by the actions of the Democratic Council. Woods went on to describe to the jury what a guilty verdict required, stating that "The intent must be either to injure, oppress, threaten or intimidate a

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[43] "Important Trial," *Semi-Weekly Louisianian*, March 28, 1874.

[44] Ibid.

[45] Ibid.

[46] Ibid.

citizen of the United States with the purpose of preventing or hindering his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution of the United States."[47]

In addition to determining if a conspiracy existed, and if within that conspiracy the defendants hindered the rights given to the speakers by the Constitution, Woods also required that the jury decide which side fired the first shot. If it came from the black Republicans and only one man fired, that does not make the whole assembly of blacks violent. Therefore, the defendants could not claim to be acting in self-defense against a violent group.[48] Woods addressed the accusation that the blacks at the riot were armed by saying that "In Alabama, the carrying of concealed weapons is prohibited by statute. But if a man carries his weapon in full view, whether gun or pistol, and does so with lawful purpose, his right to do so is as clear as his right to carry a watch or wear a chain."[49]

Woods devoted more of his attention to the Eutaw Riot case than simply hearing the testimony in court. He knew that the case had the potential to set a major legal precedent under the Fourteenth Amendment and the Enforcement Act. Because of the breadth of the case he wrote to Supreme Court Justice Joseph P. Bradley in December 1870. Woods wanted to be clear whether the new Enforcement Act applied to the riot case.[50] Bradley was not unfamiliar with the South and its social collapse after the Civil War. On a trip through the South in 1867 Bradley experienced firsthand the agitation and fear southerners felt toward the North and their growing tension with the newly freed

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[47] Ibid.

[48] Ibid.

[49] Ibid.

[50] Christopher Waldrep, *Jury Discrimination*: *The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi* (Athens: University of Georgia, 2010,), 138.

blacks over the distribution of labor. Bradley wrote to his daughter, "The people here, say that the Freedman's Bureau is our engine of mischief; that it teaches the negroes to be discontented, gives them false notions; and utterly incapacitates them from labor."[51] He realized that the tensions between blacks and whites, as well as those between Republicans and Democrats, ran deeper than simply a lost war. He described southerners to his daughter, writing that "They look upon themselves as a conquered people and I fear will have to suffer still more before they will give up their cherished notions of a great Southern Confederacy."[52]

When Woods wrote to Bradley asking about the Eutaw Riot, Bradley wrote back to Woods calling the firing itself "a private municipal offense" and that the federal issue was the motivation for the firing into a crowd.[53] Bradley did not intend that the municipal crime should go unpunished, nor did he mean to diminish the severity of the firing. In the eyes of the law, though, the action did not hold as much importance as the motivation behind the action. The defendants could be motivated for any number of reasons that could be legally prosecuted. Historian Lou Falkner Williams describes the complication behind the motives of Klan attacks, writing that "…contempt for the black man… and desire to suppress the Republican state government were so inextricably intertwined that it is impossible to separate them."[54] Both the Democrats and the Klan, who can likely be interchangeable in the Eutaw Riot case, had many reasons for wanting to start the riot.

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[51] Bradley to his Daughter, April 30, 1867, MG 26, box 3, Correspondence 1867, Bradley Papers, New Jersey Historical Society.

[52] Ibid.

[53] Bradley to Woods, January 3, 1871, Box 3, Bradley Papers.

[54] Lou Falkner Williams, *The Great South Carolina Ku Klux Klan Trials 1871-1872* (Athens: The University of Georgia Press, 1996), 29.

Yet, to be charged under the Enforcement Act, it was not the action alone, but the fact that they premeditated the action as a conspiracy to deny rights of U.S. citizens. Bradley's letter to Woods also explicitly stated that the Fourteenth Amendment does in fact incorporate the Bill of Rights. He wrote, "Now, the privileges or immunities of citizens of the United States here referred to, are undoubtedly those which may be denominated fundamental; and among those I suppose we are safe in including those which, in the Constitution are expressly secured to the people, either as against the action of the Federal Government or the State Governments."[55] Bradley continued in his letter to Woods, "Viewed simply as a riot, it was an offense against the municipal law only; but viewed as a riot to intimidate persons and prevent them from exercising the right of suffrage, guaranteed to them by the Fifteenth Amendment to the Constitution; it was a violation of that."[56] Focusing on the fourth charge against the Democratic rioters, that of depriving citizens of their right of suffrage, Bradley wrote, "It is alleged that their savage and dastardly act was the result of a conspiracy to intimidate the persons attending the meeting from voting at the coming election, it seems to me that it was a violation of the foregoing act, and punishable as felony..."[57] Bradley's emphasis on the Fifteenth Amendment was not unusual. As the last Amendment ratified before the Enforcement Act, it was the most relevant in the mind of the judge.

The courts needed to interpret the Fifteenth Amendment in addition to the other legislation. As historian Xi Wang points out, both the North and the South had their own

[55] Bradley to Woods, March 12, 1871, Box 18, Bradley Papers, New Jersey Historical Society.

[56] Bradley to Woods, January 3, 1871, Box 3, Bradley Papers, New Jersey Historical Society.

[57] Ibid.

versions of paternalism.[58] Southerners believed it benefited blacks if whites controlled blacks' actions and labor. Meanwhile in the North, many whites felt a responsibility to help give opportunities to blacks, but after the rights of citizenship had been granted to the freedmen all Republican responsibility ended. The Republicans wanted the government to intervene enough to pass an amendment but from that point the control went to the states. Republicans, according to Wang honestly believed that the Fifteenth Amendment ended all ramifications of slavery and granted true "freedom."[59] Wang explains, "Many Republican leaders shared the popular feeling that the Fifteenth Amendment settled the issue of black men's voting rights and signaled the end of the party's antislavery mission." [60] Since southerners continued to oppress the freedmen after the Fifteenth Amendment passed, Republicans soon realized their mission had to continue. Wang writes, "Finally, they saw that the Republican state governments in the South alone could not stop the Klan terror or the rapid development of black disfranchisement by force and that the federal government was obliged to intervene."[61] The Enforcement Acts were the resulting intervention.

Bradley's letters are important because he emphasized the new Reconstruction Amendments and the conspiracy of the rioters. Bradley recognized that the Amendments and the conspiracy were significant, because under the Enforcement Act not only were the actions themselves punishable, but also if the defendants preplanned those actions then that became a key element in prosecuting the crimes as conspiracy. Bradley may

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[58] Xi Wang, *The Trial of Democracy: Black Suffrage and Northern Republicans, 1860-1910* (Athens: University of Georgia Press, 1997), 52.

[59] Ibid, 51.

[60] Ibid, 52.

[61] Ibid.

have understood the crime itself as a violation of the Fifteenth Amendment, but he used the Enforcement Act to enforce that Amendment. The Enforcement Act was only considered valid through the lens of the Fourteenth Amendment. Yet the connection had yet to be legitimized by the Supreme Court. Federal courts throughout the country faced the issue of interpreting the Amendments and legitimizing the new Enforcement Acts.

This path began with the Bill of Rights. The Constitution guaranteed the rights granted to all citizens of the United States. The Bill of Rights expressly stated these rights; but until the ratification of the Fourteenth Amendment, the Bill of Rights applied only to the federal government. With the introduction of the Fourteenth Amendment and its privileges and immunities clause, the federal courts struggled to define what the term "privileges and immunities" consisted of and whether those privileges and immunities were included in the Bill of Rights, and if they now applied to the states as well as the federal government. The issue of privileges and immunities is a longstanding battle in United States Constitutional history. As historian Raoul Berger wrote, "Because the [Fourteenth] Amendment is probably the largest source of the Courts business and furnishes the chief fulcrum for its control of Controversial policies, the question whether such control is authorized by the Constitution is of great practical importance."[62] The framers created both the Bill of Rights and the Fourteenth Amendment to protect the rights of citizens.

[62] Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Indianapolis: Liberty Fund, 1997), 3.

Woods turned to Bradley for advice on how the Fourteenth Amendment applied to the Eutaw rioters' case. What exactly were privileges and immunities and how did they apply to this particular instance? Bradley explained to Woods:

> …Congress has a right, by appropriate legislation, to enforce and protect such fundamental rights, against unfriendly or insufficient State legislation. I say unfriendly or insufficient: for the XIVth Amendment not only prohibits the making or enforcing of laws which shall abridge the privileges of the citizen, but prohibits the States from denying to all persons within its jurisdiction the equal protection of the laws. Denying includes inaction as well as action. And denying the equal protection of the laws includes the omission to protect as well as the omission to pass laws for protection.[63]

Bradley's focus on privileges and immunities comes early in the legal battle over the terms. To protect privileges and immunities the courts need to be able to define them precisely. In coming to this conclusion Bradley referenced *Corfield v. Coryell*, (1823), a Supreme Court case that had earlier defined privileges and immunities. In the case Justice Bushrod Washington addressed the privileges and immunities clause of the U.S. Constitution, not the Fourteenth Amendment. Washington wrote,

> The inquiry is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature fundamental; which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed by the citizens of the several states which compose this union, from the time of their becoming free, independent, and sovereign…protection by the government, the enjoyment of life and liberty; with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole.[64]

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[63] Bradley to Woods, March 12, 1871. Box 3, Bradley Papers, New Jersey Historical Society.

[64] James Bradley Thayer, "Corfield v. Coryell," *Cases on Constitutional Law with Notes: Part Two* (Cambridge: Charles W. Sever, 1984), 454.

In the case of the Eutaw Riot those privileges and immunities that Democrats violated were the fundamental First Amendment protections of freedom of speech and the right to assemble. Before the Fourteenth Amendment, those rights applied only to the federal government. Though the Fourteenth Amendment expressly forbids states to infringe on the rights of citizens, now the issue was whether the Fourteenth Amendment applied the Bill of Rights to the States. If so, then states are not only forbidden from impairing the rights of citizens, but can be held equally at fault if it does nothing to punish individuals from infringing upon those same rights. If the state therefore fails to pursue its duty of defending the rights of citizens, the federal government could step in. Because many states, including Alabama, refused to enforce the Constitution and protect the rights of their citizens, the duty fell to the United States Congress. This specifically applied to the state of Alabama as it had taken no action against the Eutaw rioters.[65] To give the federal government the ability to act, Congress enacted the First Enforcement Act. With its creation, the First Enforcement Act provided another piece of legislation to protect citizens' rights and added another layer of complication to the legal doctrine.

Congress created the First Enforcement Act (1870) after the Fourteenth and Fifteenth Amendments. Section Five of the Fourteenth Amendment gives Congress the right to enforce the Amendment with "appropriate legislation," which Congress attempted to do with the Enforcement Act. These acts were unprecedented; this was the first time the federal government attempted to protect the rights of citizens on a national scale.[66] According to Wang, "the framers clearly expected the [Enforcement] bill to be as

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[65] Waldrep, *Jury Discrimination*, 143.

[66] Wang, *The Trial of Democracy*, 57.

comprehensive as possible to stop the rampant Ku Klux Klan, to protect the political rights of blacks, and to defeat Democratic attempts to regain political power in the South." [67] Yet Democrats in the South argued the Fourteenth Amendment and its privileges and immunities clause did not encompass the Bill of Rights, and therefore the Enforcement Act was not intended to enforce those rights. Democrats challenged the constitutionality of the Enforcement Act on the national front in the later South Carolina Klan Trials.[68]

The South Carolina Klan Trials came at the heels of *United States v Hall* as a large scale test of the Enforcement Act. During the interim of the two *Hall* trials– the first being delayed because of a lack of witnesses – the Justice Department attempted to prosecute over 200 Klansmen in South Carolina under the Enforcement Act. As Lou Falkner Williams explained, the federal government took the stance that "The Fourteenth Amendment… had radically altered the nature of the federal system. Through the 'privileges and immunities' clause, the first eight amendments became federally enforceable rights. If a state did not protect its citizens in the exercise of those rights, the federal government could place itself squarely between the citizens and the state."[69] The federal government in South Carolina convicted many Klansmen and also sent a division of opinion on the Fourteenth Amendment and Bill of Rights to the Supreme Court, which the Supremes had not ruled on before the second *Hall* trial in Alabama.

Southworth's job as the federal prosecuting attorney in Alabama was to frame indictments that would not only stand up in court but also demonstrate the new national

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[67] Ibid, 60.

[68] Ibid, 98.

[69] Williams, *South Carolina Klan Trials*, 62.

authority embedded in the Fourteenth Amendment. He prosecuted on the understanding that the Fourteenth Amendment's privileges and immunities clause incorporated the Bill of Rights making those individual rights applicable to the states as well as the federal government. The idea was that the national courts could enforce these individual rights against individual action– under the recently passed Enforcement Acts – as well as against state action. Southworth, Woods, and Bradley recognized that if the jury found the rioters guilty under the Enforcement Act, the defendants would appeal to the Supreme Court. The appeal would provide the Supreme Court with the opportunity to rule on the Fourteenth Amendment, and the Court would have a broad, national precedent to work with.[70] Woods agreed with Bradley and followed Bradley's advice on the matter. Woods expressed his nationalistic views early in the case, when the defendants filed a pre-trial demurrer, arguing that the charges were not constitutional. His response to the demurrer was the only record of his views on the legal issues involved; it echoes Bradley, taking a broad view of the Constitution.

Woods' opinion on the demurer could have changed the structure of the American democracy. This was the first time a federal judge on record applied the Bill of Rights to all citizens of the United States. Wood's opinion is the crux of *United States v Hall* and the heart of the broad nationalistic interpretation of the Constitution for which the federal government was fighting. Woods began with a summary of the argument saying, "A demurrer is filed to this indictment based on the following grounds; (1) That the matters charged in said counts are not in violation of any rights or privilege granted or secured by the constitution of the United States. (2) That they are not in violation of any provision of

[70] Waldrep, *Jury Discrimination*, 138.

the act of congress, on which the indictment is based, or of any statute of the United States. (3) That each of said counts charges the commission of several and distinct offenses."[71] The demurrer claimed that the charges filed against the defendants were not constitutional; while the right to peaceably assemble and the right of free speech are protected by the Constitution, it is simply written that the federal government "recognizes the existence of these rights it does not secure them."[72] Defense counsel argued that the federal government cannot impair these rights, but nothing is written about the states or individuals.

Woods' opinion addressed the point of citizens' rights. Woods ruled that the intention of the Bill of Rights was to grant the rights to the people of the United States. As Woods argued, "For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained when no power is given by which restrictions may be imposed."[73] Woods continued his argument by laying responsibility at the feet of the state government as well, saying, "It is claimed that when congress is prohibited from interfering with a right by legislation, that does not authorize congress to protect that right by legislation; that as the states are not prohibited by the constitution from interference with the rights under consideration, congress, although prohibited itself from impairing these rights, has no grant of power to interfere for their protection as against the states."[74] Woods' argument was that the law protected the rights of citizens on *both the federal level and the state*

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[71] *U.S. v Hall*, Woods Opinion, 26, Federal Cases, (1872), 3.

[72] Ibid.

[73] Ibid.

[74] Ibid.

level. Woods believed that although rights were not supposed to be violated by Congress or the state, it was implied that they should be secured.[75] He rejected the first two points of the demurrer, because he claimed the right to free speech and the right to peaceably assemble are secured by the Constitution of the United States. The charges held against the defendants were a direct result of a violation of those rights. Woods summed up his point by writing that "all rights which are protected against either a national or state legislation may fairly be said to be secured rights."[76]

Woods' opinion went on to argue that the Fourteenth Amendment and the privileges and immunities clause changed the very nature of federalism. He defined the origins of specific rights of citizens by saying that "We find that congress is forbidden to impair them by the first amendment, and the States are forbidden to impair them by the fourteenth amendment. Can they not, then, be said to be completely secured?"[77] Woods believed the privileges and immunities clause in the Fourteenth Amendment referred to the fundamental rights of citizens protected by the Bill of Rights. He emphasized the legitimacy of the Enforcement Act by writing that "It would be unseemly for congress to interfere directly with state enactments, and as it cannot compel the activity of state officials, the only appropriate legislation it can make is that which will operate directly on offenders and offenses, and protect the rights which the amendment secures."[78] The rights to which Wood refers were not fully defined by the courts at this point and in fact Wang writes, Woods "actually helped to spell out the substance of the phrase 'any right,'

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[75] Ibid.

[76] Ibid.

[77] Ibid, 4.

[78] *Ibid, 3*.

which had appeared in section six of the enforcement act but had never been fully explained by the congressional Republicans who debated it. Unfortunately however, the Supreme Court would soon negate Woods' interpretation in the *Slaughterhouse* opinion."[79] Wood's opinion was extremely radical: in addition to defining the rights referred to in the Enforcement Act, Woods recognized the Fourteenth Amendment's reversal of the nature of citizenship. Originally citizenship depended on the state, but with the Fourteenth Amendment national citizenship became paramount and state citizenship depended on national.[80] This was a major turning point in American national identity.

The Eutaw rioters prevented Republican speakers from addressing a crowd, and black Republican citizens from assembling to watch those speakers. The rights of speech and assembly are specifically granted by the Bill of Rights in the United States Constitution, and Woods interpreted the Fourteenth Amendment to extend those rights to black citizens against both state and individual interference. The Fourteenth Amendment also provided Congress with the authority to enact further appropriate legislation to protect those rights of citizens; this legislation took form in the Enforcement Act. Woods' opinion made a direct link between the Reconstruction legislation and the United States Constitution.

The federal district attorney, John Southworth, had spent two years working on the *Hall* case. He fought to subpoena witnesses, and he moved witnesses out of the state for protection. He spent countless hours framing indictments to secure a guilty verdict

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[79] Wang, *The Trial of Democracy*, 121.

[80] Ibid.

under the Enforcement Act and secure a nationalistic interpretation of the Fourteenth Amendment. With all these tasks behind him, he summed up the efforts in a concluding argument that took a total of two hours and forty minutes. Judge Woods spent an additional thirty-one minutes addressing the jury. With the new Reconstruction legislation being hotly debated in newspapers across the country, Judge Woods knew that the trial of the Eutaw rioters was a topic of debate. He also recognized that the jurors held in their power an important legal doctrine that could affect the law's impact on the entire country. After he instructed the jury, relayed their duty to them, and explained the specifics of the case, he sent them to deliberate: "Take the case to your retirement, investigate it with most anxious care, giving to the defendants and to the United States the benefit of the rules of law as I have explained them for your guidance, and sensible of your great responsibility, render such verdict as will meet with the approval of your own consciences, and justify you before the Judge of all the Earth."[81]

The jury took a total of only sixty-nine minutes to come to a decision.[82] As the defendants took their seats and the judge took the bench, the court realized that Joe Elliot, one of the defendants, was absent. It took about fifteen minutes to track him down before the jury could render their verdict. As the *Mobile Daily Register* reported that day, "The court room was well filled during the progress of the argument by an attentive audience, a considerable proportion of which was composed of ladies, who entered during the opening speech, and most of whom returned after the recess at the conclusion of the speeches by the counsel for the defense."[83] With the courtroom packed and all the

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[81] "Important Trial," *Semi Weekly Louisianian*, March 28, 1872.

[82] "The Eutaw Case," *Mobile Daily Register*, January 14, 1872.

[83] Ibid.

defendants present, the jury announced its verdict: "We the jury find the defendants NOT GUILTY."[84] With that verdict went the opportunity for the Eutaw Riot case to legitimize the Enforcement Act and provide a broad, national interpretation of the Fourteenth Amendment. The case could not be appealed with no guilty verdict and thus it would not be heard by the Supreme Court. Therefore the Enforcement Act failed to keep southerners from violating blacks' rights. Unfortunately, had the case not been postponed and District Judge Busteed had sat on the bench with Woods, the two judges could have divided on the issue and automatically sent the case to the Supreme Court, regardless of the outcome of the jury. A division of opinion would have given the Supreme Court an earlier opportunity to rule on the Fourteenth Amendment and Enforcement Acts with a strong precedent from the lower court.

Some citizens of Eutaw rejoiced at the news. Less than a week after the jury delivered the verdict, a letter to the editor appeared in the *Mobile Daily Register*. The letter ranted about the legitimacy of the Enforcement Act, saying, "The very law under which they were tried was a fraud and a false hood, because it put the accused on trial for an imaginary offence—in other words, for one offence; a political offence; against the United States Government—when, in truth, they had only been guilty of a breach of the peace, common to all political meeting and elections, which was a State offence, cognizable by the State courts, and not within the jurisdiction of the United States courts."[85] The author goes on to complain about all attempted trials under the Enforcement Act, including the South Carolina Klan trials. He wrote, "In Alabama

[84] Ibid.

[85] "Disappointed Vengeance," *Mobile Daily Register*, January 18, 1872.

prisoners are arraigned to be tried: in South Carolina they are arraigned to be convicted."[86] The sheer number of Klansmen convictions in South Carolina upset many Democrats throughout the South. *U.S. v. Hall's* not guilty verdict was a relief to a majority of Southern Democrats who saw the acquittals in the Eutaw Riot case as a triumph over the Northern Republicans. It was a major disappointment to Republicans who had hoped to have the broad national interpretation of the Constitution legitimized by the federal courts.

A month after the trial, Republicans and government officials began to question the trial. The Justice Department questioned why the jury in the Eutaw Riot case did not take the test oath. The Justice Department investigated District Attorney Southworth to see if he in some way allowed the jury to be tampered with. The problem was that if anyone tampered with the jury in any way, the jurors could not have given a fair judgment. District Attorney Southworth asked Judge Woods to verify the accuracy of the trial. Woods vouched for Southworth's dedication and persistence in the case.[87] He also supported the jury's not guilty verdict by stating that "in my judgment the jury empaneled was a jury of good and lawful men a fair and impartial jury and were disposed to do their duty according to their oaths." He went on to write that "They gave the case of the Eutaw rioters the most careful attention and in my opinion their verdict was justified by the evidence in its case."[88] This comment could possibly show that Woods' opinion on the case had changed. So close to the end of the trial it seems more likely that Woods simply

[86] Ibid.

[87] Woods to Department of Justice, Feb. 7, 1872. Department of Justice, Source Chronological Files for Alabama, "Letters Received by the Attorney General, 1871-1884: Southern Law and Order." Reel 6-7, Microfilm.

[88] Ibid.

saw no wrongdoing on the part of the jury. A jury is required to find guilt beyond a reasonable doubt; if they maintained any question in their minds they could not within the confines of the law convict the defendants. Woods simply defended the district attorney and the court's selection of jury members.

The Eutaw Riot case joined with many other Enforcement Act cases across the South. Prosecutions of the cases began fervently but soon died down because of the overload of the cases within the Justice Department. Prosecution in Alabama was generally unsuccessful. The same year the Eutaw Riot case occurred, the Justice Department terminated seven other criminal prosecutions in the Southern District of Alabama.[89] Only one of the cases that year resulted in an acquittal, that of the Eutaw rioters. Six cases under the Enforcement Act were nolled, discontinued, or quashed, and seven cases were still pending in 1873.[90] But as Robert Kaczorowski points out, things got worse: "During the spring and summer of 1873 the Justice Department completely abandoned civil rights enforcement. Instead of actually prosecuting violators of the Enforcement Acts, the government merely threatened prosecution, hoping this would deter the Ku Klux from resuming its terror." [91] A small window of time had appeared in which the Justice Department could legitimize the new Enforcement Act at the federal level, and with the failure of the court in the Eutaw rioter's case, the window closed. The initial Fourteenth Amendment battle in the Supreme Court would be over the Fourteenth

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[89] Annual Report to Attorney General, Southern District of Alabama, Dec. 31, 1872, Department of Justice, Source Chronological Files for Alabama, "Letters Received by the Attorney General, 1871-1884: Southern Law and Order." Reel 6-7, Microfilm.

[90] Ibid.

[91] Kaczorowski, *Judicial Interpretation*, 89.

Amendment and its privileges and immunities clause as it applied to white butchers rather than to the former slaves.

Until 1873 the Supreme Court had avoided ruling on the Fourteenth Amendment. One case from South Carolina Klan trials was sent to the Supreme Court on a division of opinion by the two judges, but the Supreme Court refused to hear the case on a legal technicality, preferring to hear the *Slaughterhouse* cases instead.[92] A year after the Eutaw Riot trial concluded, the *Slaughterhouse* cases came to the docket of the Supreme Court. The case involved a monopoly of the State of Louisiana over the butchers in New Orleans. The butchers of New Orleans sued, because the city's slaughterhouses had been moved to a state-controlled area. The butchers believed that the state monopoly violated their fundamental right of occupation, to earn an honest living, and these rights should have been protected under the Fourteenth Amendment. Both Judge Woods and Justice Bradley, whom Woods consulted in the Eutaw riot case, heard the *Slaughterhouse* cases in the lower level federal court. Woods and Bradley believed that the monopoly did violate the butchers' fundamental right to earn a living.

When the case advanced to the Supreme Court, the majority did not agree with Bradley or Woods. The Supreme Court voted five-four against the butchers.[93] Supreme Court Justice Samuel Freeman Miller gave the Court's decision, explaining that the privileges and immunities referred to in the Fourteenth Amendment are granted by the state, not the federal government. Miller ruled that "the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the Constitutional

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[92] Williams, *South Carolina Klan Trials*, 132.

[93] *Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co. et al.*, 15 F. Cas. 649 (C.C.D. La., 1870).

and legislative power of the States, and without that of the Federal government."[94] The Court went on to say that the framers intended the Fourteenth Amendment specifically for the former slaves, writing of the Reconstruction Amendments that "no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him."[95] The Court feared giving the federal government too much power. As Miller explained, the "consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions: when the effect is to fetter and degrade the state governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character…"[96] Because the Supreme Court refused to recognize the change in relationship between federal and state governments inherent in the Fourteenth Amendment, the Amendment would soon be used to block the rights of black Americans, an "unintended consequence," according to historian Richard L. Aynes, of the *Slaughterhouse* cases.[97]

Justice Bradley wrote one of the dissenting opinions in the *Slaughterhouse* cases. According to Bradley, "The fourteenth amendment, in my judgment, makes it essential to

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[94] Majority Decision, *U.S. v. Slaughterhouse,* 83 U.S. 63 (1873).

[95] Ibid.

[96] Ibid.

[97] Aynes, Richard L., "Unintended Consequences of the Fourteenth Amendment and What They Tell Us About Its Interpretation," in *Unintended Consequences of Constitutional Amendment*. Ed. David E. Kyvig (Athens: University of Georgia Press, 2000) 122.

the validity of the legislation of every state that this equality of right should be respected." [98] Bradley argued for basic equal rights for all citizens on the grounds that the Fourteenth Amendment automatically incorporates the Bill of Rights and therefore the Amendment protects those rights granted by the Constitution and applies them to all citizens. He instructed the Court, "If this inhibition has no reference to privileges and immunities of this character, but only refers, as held by [the majority] to such privileges and immunities as were before its adoption specifically designated in the Constitution or necessarily implied as belonging to citizens of the United States, it was a vain and idle enactment, which accomplished nothing, and most unnecessarily excited congress and the people on its passage."[99] Bradley's dissent makes an excellent argument for the necessity of the Fourteenth Amendment; if it did not grant equal rights then why was the Amendment necessary? Williams explains the reasoning of the Court and the advantage of hearing the *Slaughterhouse* cases to interpret the Fourteenth Amendment initially, as opposed to some other more violent and racially motivated cases within the court system, such as the South Carolina Klan cases; "Choosing a case about white butchers instead of black freedmen effectively depoliticized the explosive legal questions involved in civil rights enforcement and enabled the High Court to decide some of the controversial issues without hearing the Klan cases at all."[100] It was *U.S. v. Cruikshank* that finally settled the meaning of the Fourteenth Amendment.

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[98] Bradley's Dissent, *U.S. v Slaughterhouse*, 83 U.S. 63 (1873).

[99] Ibid.

[100] Lou Falkner Williams, "Federal Enforcement of Black Rights in the Post-Redemption South: The Ellenton Riot Case," *Local Matters: Race, Crime and Justice in the Nineteenth-Century South*. (Athens: University of Georgia Press, 2001): 183.

A year after the Slaughterhouse decisions Justice Bradley and Justice Woods heard the case that would define the Fourteenth Amendment. Still a member of the circuit court Woods sat jointly with Supreme Court Justice Bradley on a case from Louisiana. The case involved the Colfax Massacre, in which a group of about 165 whites killed close to 100 Republican freedmen while the latter were defending a public office building. The violence began when the governor of Louisiana appointed offices to several Democrats and then before making any of the appointments official, gave the offices to Republicans instead. Both parties refused to recognize the other and a fight began over who would control the courthouse. On Easter Sunday, 1873, a standoff began with mostly black Republicans defending the courthouse and white Democrats laying siege to it. The white Democrats eventually set fire to the courthouse and fired on any blacks who ran out. The Democrats then took prisoners and marched them two by two into the woods and shot them in cold blood. The federal government struggled to make arrests, but only nine of the approximately 165 white men who took part in the massacre were arrested and charged.[101]

The federal government was able to gain a conviction for three white defendants in the lower level courts under the Enforcement Act. The language Woods used in addressing the jury and the wording of his ruling in *U.S. v Cruikshank* (1876) resonated back to *U.S. v Hall*. The essential elements of the two cases seemed similar, with charges against the men being that they violated the group's right to assemble and right to bear arms, but the actual events of the Colfax Massacre far eclipsed the violence in Eutaw.

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[101] Charles Lane, *The Day Freedom Died: The Colfax Massacre, The Supreme Court, and the Betrayal of Reconstruction* (New York: Henry Holt and Company, 2008), 94-107, 159.

While Woods' opinions remained the same, Justice Bradley seemed to retreat from his earlier position.[102] Sitting with Justice Woods created the opportunity to send the case to the Supreme Court on a division of opinion, which is exactly what Bradley did. Unlike his letters to Woods regarding the *Hall* case, Bradley's *Cruikshank* opinion eviscerated the indictments in the case. He stripped meaning from all the charges claiming the district attorney failed to write in the indictments the cause of the riot being race related. Though it was implied, it was not written absolutely. Therefore, the charges could not stand. As historian Charles Lane wrote, "Bradley seemed fed up with the Negro."[103] Bradley later wrote, "When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected."[104] It is possible that Bradley felt bound by the Court's precedents set in the *Slaughterhouse* cases. He may not have wanted to fight a battle which had already been decided by the Court. Woods respectfully disagreed with Justice Bradley's opinion, however, and the case went to the Supreme Court.

When the case reached the Supreme Court, it ruled to overturn the three convictions of the lower court. The Court then overruled Woods' original interpretation

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[102] Christopher Waldrep, "Joseph P. Bradley's Journey: The Meaning of Privileges and Immunities," *Journal of Supreme Court History* 34 (July 2009): 158.

[103] Lane, *The Day Freedom Died*, 253.

[104] *Civil Rights Cases*, 109 U.S. 3 (1883), quoted in Charles Lane, The Day Freedom Died: *The Colfax Massacre, The Supreme Court, and the Betrayal of Reconstruction* (New York: Henry Holt and Company, 2008) 253.

of the Fourteenth Amendment. As Robert Kaczorowski observed, "extending the reasoning of the *Slaugher-House* decision to crimes of racial violence, the Court in *United States v. Cruikshank* held that Congress' power to enforce the Fourteenth Amendment was limited to violations of individuals' constitutional rights attributable to the actions of the States."[105] The Court ruled that the framers of the Fourteenth Amendment initially created it with the actions of the states in mind. The majority believed the Fourteenth Amendment does not protect citizens from the actions of other citizens, only from the actions of the states. In addition, the Court also decided that the Fourteenth Amendment does not apply the Bill of Rights, specifically the Second Amendment, to the states. Congress could not infringe on the rights of citizens to bear arms, but it was not required to protect those rights either.

Speaking for the *Cruikshank* majority, the newly appointed Chief Justice, Morrison Waite, wrote that "The only obligation resting upon the United States is to see that the States do not deny the right."[106] The Court snuffed out the privileges and immunities clause, and the argument that it included the Bill of Rights, stating that "This right was not created by the amendment, neither was its continuance guaranteed, except as against congressional interference. For their protection in its enjoyment, therefore, the People must look to the States. The power for that purpose was originally placed there, and it has never been surrendered to the United States."[107] In order to discredit the Fourteenth Amendment the Court defined citizenship in the United States. The Court objected to an all-encompassing citizenship of statesmen and countrymen in favor of a

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[105] Kaczorowski, *Judicial Interpretation*, xvi.

[106] Majority Opinion, *U.S. v. Cruikshank*, U.S. 542 (1876), 92.

[107] Ibid.

mutually-inclusive definition of citizenship. Citizens could be both a citizen of a state and a citizen of the United States, one does not fall under the umbrella of the other. The Court explained, "We have in our political system a government of the United States and a government of each of the several states. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other."[108]

The true meaning of the Fourteenth Amendment and citizens' rights both suffered because the Court determined in *Cruikshank* that the Amendment only applied in race related situations, and it only applied to state action. Moreover, the High Court ruled that the prosecution must prove racial motivation in cases involving black rights—an extremely difficult thing to do. The federal government effectively left blacks with nowhere to turn for justice. *Cruikshank* ruled definitively that the Fourteenth Amendment did not apply the Bill of Rights to the states. The Court put the protection of rights at the state level. But the complete inaction of the states to protect the rights of blacks gave freedmen no relief. Where could they turn when both the federal government and the state government refused to help? Kaczorowski sums up the Court's decision by saying, "To a significant degree, the protection of white citizens' rights under the Thirteenth and Fourteenth Amendments became casualties to the Supreme Courts' recognition of the primacy of State authority over citizenship and limitation of these amendments to racial

[108] Ibid.

discrimination."[109] One final case would prove that the major advocates of the Fourteenth Amendment and its far reaching interpretation of rights of citizens fell under the pressure of the country.

By 1883 Justice William B. Woods had been appointed to the Supreme Court. President Grant appointed him to the bench on December 15, 1880.[110] Close to a decade after he heard the trial of the Eutaw rioters he heard yet another case on the Fourteenth Amendment, but this time he was a judge in the highest court in the country along with Justice Bradley. In *United States v. Harris* (1883) the United States sued a sheriff who led an armed group into a jail and took the prisoners out of jail, killing one in the process. The group was tried under the Enforcement Act. This time the Supreme Court declared the act unconstitutional, claiming once again that the Fourteenth Amendment applied only to state action, and therefore the government could not prosecute under the Enforcement Act. For this case Judge Woods wrote the majority opinion, stating that "It was never supposed that the section under consideration conferred on Congress the power to enact a law which would punish a private citizen for an invasion of the rights of his fellow citizen, conferred by the State of which they were both residents, on all its citizens alike."[111] With this ruling Justice Woods completely reversed his previous decisions in *Cruikshank, Slaughterhouse,* and the Eutaw Riot cases. It is unclear why Justice Woods changed his mind; he may have felt bound by precedent. The Court had already

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[109] Kaczorowski, *Judicial Interpretation*, 148.

[110] Timothy L. Hall, "William B. Woods," *A Biographical Dictionary* (New York: Facts on File, Inc, 2001), 180.

[111] Woods' Decision, *U.S. v. Harris*, 16 U.S. 629 (1883).

dismissed his opinion in *Hall*, *Cruikshank*, and *Slaughterhouse*. He may have given up the fight.

Judge Woods was initially an advocate for the Fourteenth Amendment and its coverage of the Bill of Rights. A little over a decade later he had completely changed his mind. His change of heart mirrors the nation's path through Reconstruction. With the Fourteenth Amendment and the Enforcement Act, the United States had the opportunity to legally punish the Klan and Democrats who purposely kept the Freedmen from exercising their rights. The Eutaw Riot and the corresponding court case would have given the Supreme Court an opportunity to define the Fourteenth Amendment in a legitimate nationalistic way that would have improved the South and protected the former slaves. The Eutaw Riot case, *U.S. v. Hall*, did not move up to the higher court, but had the Court heard the case there was no guarantee that the same results would not have occurred. The legal history of Reconstruction was one of missed opportunities.

The larger picture of Reconstruction in the South was represented in microcosm in the small Alabama town of Eutaw in Greene County. The Eutaw Riot case could have been a major turning point in Reconstruction; the Supreme Court following Judge Woods' nationalist example, could have created a broad nationalistic interpretation of the Fourteenth Amendment and the Enforcement Act, thus giving blacks protection of the rights granted in the Bill of Rights. Instead black citizens had to wait almost a century for rights seemingly granted to them in the Constitution. *U.S. v Hall* stands out from the hundreds of cases heard during Reconstruction as an example of a great "what might have been."

Conclusion-Missed Opportunity

Reconstruction presented the entire country with major challenges. The South attempted to learn how to live under new laws, which many whites believed were unconstitutional. The state governments struggled to maintain the pre-war status quo. The federal government faced many obstacles while trying to create legislation to protect the rights of the newly freed slaves. And the courts on both the state and federal level endeavored to define and work within the new legislation. Unfortunately, while many civil rights offenses were brought to justice under the newly ratified Amendments and the Enforcement Act of 1870, the courts missed several primary opportunities to legitimize the new legislation and properly protect the freedman of the United States. *United States v. Hall* was one such opportunity.

Congress began the twelve year period of Reconstruction by ratifying the Thirteenth Amendment, the first of the Reconstruction Amendments. The Thirteenth Amendment did not do enough to protect the former slaves from white southerners. It granted them their freedom but it did not protect their rights. White southerners created elaborate "black codes" in the South to prevent the freedmen from taking part in fair labor practices, or voting. To aid blacks Congress enacted the Fourteenth and Fifteenth Amendments. With each Amendment the Congress hoped the battle over freedmen's rights would end. Southerners continued to ignore the amendments, and the Congress needed specific authority to enforce the federal laws. The creation of the Enforcement Act granted Congress the national power to bring white southerners who ignored the Reconstruction Amendments to justice. And, yet again, southerners ignored the laws, proclaiming the Enforcement Act unconstitutional. Eutaw, Alabama provides the perfect microcosm in which to view southerners' responses to Reconstruction.

Eutaw was a hub for violent Klan activity, yet most Klansmen went unpunished. In one instance several men, later known as the "Eutaw Prisoners," blatantly assaulted a Republican, Joseph Hill, on a public street in broad daylight in March 1868, and were arraigned and tried in a military tribunal. Democrats argued the military had no jurisdiction, but General George Meade, the head of the Fifth Military District, insisted the crime was a political one. The men were convicted and sent to hard labor at the Dry Tortugas, but less than two weeks later Meade reversed his decision and the men were brought back to Eutaw with much fanfare. The public outcry had pressured Meade to change his mind. He warned his district that he would not be lenient a second time, but the celebrity of the convicted men and the public's confidence in their social power created an environment of citizen control, not military control. Military control of the South was ineffective, because the public's popular outcry trumped military justice. Southerners never respected the military and Meade's annulment of the conviction became a perfect example of the social power of citizens over the military.[1] While the Eutaw Prisoners may have been punished initially they were soon free to continue to abuse freedmen and white Republicans throughout the town of Eutaw and Greene County.

Within two years of the Eutaw Prisoners' trial, the Klan committed the brutal murder of Alexander Boyd, the county solicitor, and again went unpunished. In May 1870, the Ku Klux Klan rode into Eutaw and killed Boyd, a state official who was attempting to find the murderers of three black men. The Klan then calmly rode out of town, leaving several people as witnesses. Yet even with eye witnesses, including the sheriff, no one formed a posse or made any attempt to pursue the criminals. The Governor insisted that a grand jury be formed and sent an investigator

[1] William Warren Rogers Jr, "The Eutaw Prisoners: Federal Confrontation with Violence in Reconstruction Alabama," *The Alabama Review: A Quarterly Journal of Alabama History* 43 (April1990): 99.

to Eutaw, but no arrests were made. The citizens of the town either refused to testify out of fear of the Klan, or did not testify to protect the Klan. Either way this event represents the same problems the federal government had in prosecuting crimes. It became difficult to get any witnesses to talk because testifying became so dangerous, especially when the federal government could not promise protection from retaliation by the Klan.[2]

In October 1870, a riot involving a Republican rally and simultaneous Democratic rally broke out in Eutaw, Alabama. Violence between Republicans and Democrats was not unusual, but the scale of the riot was unique. The seemingly premeditated attack on the part of the Democrats provided a perfect opportunity to prosecute violators using the new Enforcement Act. The attorney general for the federal government, John Southworth, struggled to prove the premeditation, conspiracy, and collusion of the Democratic rioters. The federal circuit judge William B. Woods sought advice in defining the Enforcement Act within the Fourteenth Amendment. Ultimately Judge Woods, with the advice of Supreme Court Justice Joseph P. Bradley, defined citizenship through the Fourteenth Amendment and the Bill of Rights, and justified their protection via the Enforcement Act. His interpretation of the Fourteenth Amendment was unprecedented and broad in its understanding. *U.S. v Hall* was the first time the federal courts applied the rights protected by the Bill of Rights to the states through the Fourteenth Amendment and its privileges and immunities clause. This meant that through the Fourteenth Amendment blacks had the same rights granted to all citizens by the Bill of Rights. Without the link of the Fourteenth Amendment blacks may have been free, but they did not possess the same rights as white citizens. The failure of the jury to convict the defendants made

[2] William Warren Rogers, "The Boyd Incident: Black Belt Violence During Reconstruction," *Civil War History* 21, (December 1975): 314.

appeal impossible, and the case could not be certified to the Supreme Court on a division of opinion, thus the opportunity to have the highest court in the country define the privileges and immunities clause of the Fourteenth Amendment to include the Bill of Rights, as Judge Woods had done, ultimately failed.[3] Unfortunately, the Court decided to hear a case decidedly less violent and political compared to *U.S. v Hall*.

The prosecutions throughout the South under the new Enforcement Act began strong. The Justice Department throughout the South tried and convicted many members of the Ku Klux Klan. But the officials in charge of bringing these men to trial quickly became overwhelmed. Southerners insisted the Fourteenth Amendment did not encompass protections afforded by the Bill of Rights and thus could not be used to prosecute violators. The Supreme Court had not yet had the opportunity to hear a case involving the Enforcement Act and the Fourteenth Amendment, and therefore could not weigh in on the legitimacy.

The Supreme Court eventually defined the term privileges and immunities in the *Slaughterhouse* cases (1873) where the Court ruled unfavorably for the rights of black citizens. In the *Slaughterhouse* cases the Supreme Court ruled that state citizenship and federal citizenship are two separate things. One does not have to be dependent on the other. Therefore it was up to the states to protect the rights of its citizens. This was a major blow for supporters of a broad interpretation of the Fourteenth Amendment. The Supreme Court further emasculated the Fourteenth Amendment in *U.S. v Cruikshank* (1876), which severed the connection even more between the Fourteenth Amendment's privileges and immunities clause and the Bill of Rights. The Court ruled that the Fourteenth Amendment only protected citizens against state action, not

[3] Melinda Meek Hennessy, "Political Terrorism in the Black Belt: The Eutaw Riot," *The Alabama Review: A Quarterly Journal of Alabama History* 33 (January 1980): 48.

the actions of individuals. Therefore any Klan activity or political violence that was not state sponsored could not be prosecuted by the federal government. The Court also decreed that because the charges filed against the defendants did not explicitly state that the massacre was race based then the charges were invalid. Clearly, a crime was committed but unless it was a race based crime it was a state-level crime, not a federal crime. Proving race in federal court turned out to be virtually impossible. As a result of both the *Slaughterhouse* cases and *Cruikshank,* black citizens were left with nowhere to turn. The states and the federal government both refused to protect their rights. It would be almost another century until society could move past the Courts' decisions. Had the Supreme Court heard the Eutaw Rioters' case the outcome of their decision may have been different, and the catastrophic course of Reconstruction could have been altered. Because *U.S. v Hall* was a more political trial than *Slaughterhouse* the differing events and views of the participants may have influenced the Supreme Court justices' opinions, especially because the *Slaughterhouse* precedent would not have blocked a broader interpretation.

Eutaw itself provided a lens through which to view the legal battles of Reconstruction, before they became national battles. By looking at Eutaw and the actions of its citizens, historians can view Reconstruction on a smaller and more personal scale. This microscopic view of history provides historians evidence and reasons why Reconstruction failed, and what could have changed the ultimate outcome. One piece of evidence is *United States v Hall*. The *Hall* case provides historians an alternative view of the legal battles of Reconstruction, which could have steered the federal courts and thus the nation in a direction more beneficial to the freed people and to egalitarian goals embedded in the Fourteenth Amendment.

Eutaw provided the perfect storm of events for the riot that resulted in the federal court case *United States v Hall.* This lower-level court case became the basis on which a broad interpretation of the Fourteenth Amendment was based. This court case was the first instance in which the Bill of Rights was applied through the Fourteenth Amendment. With this case the broad scope of this new Reconstruction Amendment had the potential to set a precedent which would alter the course of Reconstruction. Because of the fierce southern resolve to maintain the status quo and the limited views of the Supreme Court, *U.S. v Hall* remains a missed opportunity for the United States courts.

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